

Brief Overview
of the major changes being proposed to
the recusal regulations
at 50 CFR 600.235

Four major proposed modifications

1. Include the multi-step test NOAA GC uses to determine whether a voting recusal is required.
2. Define the term “close causal link” and provide guidance on determining whether a close causal link exists.
3. Include the attribution principles that are applied when calculating a Council member’s financial interests in the fishery and apply a “proportional attribution” approach for certain financial interests.
4. 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.

1. Include the multi-step test used to determine whether a voting recusal is required.

- **Step One**: Is there a Council decision?
“Council decision” will continue to be defined as Council approval of: (1) an FMP/FMP amendment with or without implementing regulations; (2) a regulatory amendment; (3) an emergency rule; or (4) Council comments on a Secretarial FMP/FMP amendment)
- **Step Two**: Is there a Council member with financial interests in the fishery affected by the Council’s action?
- **Step Three**: Is there a close causal link between the council decision and the Council member’s financial interests?
- **Step Four**: Is there an expected and substantially disproportionate benefit to the Council member’s financial interests?

If the answer to any of these questions is “no,” a voting recusal would not be required (although a Council member could still choose to voluntarily recuse himself or herself).

2. Define “close causal link” and provide guidance on how to determine whether a close causal link exists.

- “Close causal link” would be defined to mean “that a Council decision would reasonably be expected to directly impact or affect the financial interests of an affected individual.”
- For Council decisions **that require implementing regulations**, a close causal link exists **unless** (A) the chain of causation is attenuated or contingent on the occurrence of events that are speculative or unrelated, or (B) there is no real, as opposed to speculative, possibility that the Council decision will affect the Council member’s financial interests.
- For Council decisions **that do not require implementing regulations**, a close causal link exists if there is a real, as opposed to speculative, possibility that the Council’s decision will affect the Council member’s financial interests.

3. Include the attribution principles and apply a “proportional attribution” approach for calculating certain financial interests.

- **Direct Ownership (proposed change from current practice)**
 - “proportional attribution” of fishing activity if the Council member owns less than 50% of the company
 - “full attribution” of fishing activity if the Council member owns 50% or more of the company
- **Direct Employment (no change from current practice)**
 - “full attribution” of fishing activity if the Council member is employed by a company with financial interests in the affected fishery
- **Indirect Ownership (proposed change from current practice)**
 - “proportional attribution”
- **Parent Ownership (no change from current practice)**
 - No attribution of fishing activity if the parent owns less than 50% of the Council member’s company or employer
 - “full attribution” of fishing activity if the parent owns 50% or more of the Council member’s company or employer

4. Require the development of regional recusal determination procedure handbooks.

The Handbook would be a region's guidance document that explains the typical process and procedure followed by the region in preparing and issuing recusal determinations.

Among other things, a Handbook would include descriptions of:

- How the fishery or sector of the fishery affected by the Council action will be identified,
- When recusal determinations will be prepared and issued prior to Council meetings, and
- How the Council and the public will be made aware of recusal determinations.

- The proposed rule describes other proposed changes so the public is encouraged to review the proposed rule for all the proposed modifications.
- A link to the proposed rule is provided under the B-3 NOAA GC report.
- The proposed rule can be found here:
<https://www.federalregister.gov/documents/2018/11/16/2018-24905/magnuson-stevens-fishery-conservation-and-management-act-provisions-regional-fishery-management>
- The comment period is open now and ends March 6, 2019.