

WORKING DRAFT

Caribbean Fishery Management Council, Scientific and Statistical Committee Practices and Procedures Concerning Objectivity and Conflicts of Interest

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires each fishery management council to establish, maintain, and appoint members of a scientific and statistical committee (SSC) “to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council’s development and amendment of any fishery management plan.”¹

The MSA further provides that “[e]ach scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.”²

The SSC, therefore, plays an important role in the Council’s efforts to develop conservation and management measures that are consistent with the national standards for fishery management, including in particular National Standard 2 (NS2). NS2 states that “[c]onservation and management measures shall be based on the best scientific information available.”³ The SSC assists the Council in identifying the best scientific information available (BSIA) and provides advice and recommendations based on BSIA.⁴

In fulfilling its role as the Council’s scientific advisory committee, the SSC must ensure that its deliberations, advice, and recommendations are clear and well-reasoned. While the MSA does not explicitly address SSC member conflicts of interest, per the National Standard 2 guidelines, SSC members must disclose and avoid financial or other conflicts of interest when conducting a formal peer review, and the Council believes there is value to having SSC members do the same when identifying BSIA or otherwise making recommendations to the Council. This document summarizes the role of the SSC in providing scientific advice for management decisions, as set forth in the MSA and applicable guidance and regulations. Based on applicable law and guidance, this document outlines best practices to prevent financial or other

¹ MSA 302(g)(1)(A), 16 U.S.C. 1852(g)(1)(A).

² MSA 302(g)(1)(B), 16 U.S.C. 1852(g)(1)(B); *see also* 50 CFR 600.315(c).

³ MSA 301(a)(2), 16 U.S.C. 1851(a)(2).

⁴ 50 CFR 600.315(c)(1). Note that although the SSC helps identify and ensure that conservation and management measures are based on BSIA, it ultimately is NMFS’s responsibility to approve conservation and management measures and certify that the decisions are consistent with BSIA. As part of that process, NMFS will evaluate and use the SSC’s recommendations and other information, as appropriate. See NMFS Procedure 01-101-10, NOAA Fisheries Framework for Determining that Stock Status Determinations and Catch Specifications are Based on the Best Scientific Information Available, effective May 7, 2019, at 2, *available at* <https://media.fisheries.noaa.gov/dam-migration/01-101-10.pdf>.

conflicts of interest and ensure objectivity. The best practices described herein are intended to facilitate robust scientific discussion and ensure continued trust in the Council processes.

SSC Peer Review of Scientific Information

In fulfilling its role as the Council's scientific advisory body, the SSC may be asked to conduct a peer review of scientific information as part of the process to recommend whether information is the best scientific information available or might otherwise be tasked with a peer review.⁵ For example, the SSC may be asked to review a draft stock assessment that has not otherwise undergone a peer review under another process, such as a Southeast Data, Assessment, and Review peer review process.

When conducting its own peer review, the SSC should adhere to the standards for peer review in NMFS's NS2 guidelines, including the standards for avoiding conflicts of interest. The SSC can conduct a peer review as a body or an individual member or members of the SSC can participate in a peer review.⁶ This document contains best practices for when the SSC conducts a peer review as a body, based on the applicable NS2 guidelines.

Peer review is a process used to ensure that the quality and credibility of the scientific information and methods meet the technical and scientific standards in the pertinent area.⁷ The peer review helps ensure the objectivity, reliability, and integrity of scientific information.⁸ Within the Council context, a peer review of the scientific information underlying the management decisions instills confidence in the management decision. The NS2 guidelines provide guidance for evaluating whether peer review is necessary as well as the appropriate level of any review.⁹

When the SSC as a body conducts a peer review, the SSC members participating in the peer review must possess the relevant expertise and experience to conduct the review, be independent from the material under review, and otherwise be free of conflicts of interest.¹⁰ This document focuses on best practices for ensuring the latter two criteria are met.

Regarding independence, to provide an objective and credible review of the information, the NS2 guidelines provide that "[p]eer reviewers must not have contributed or participated in the development of the work product or scientific information under review."¹¹ In addition, when

⁵ 50 CFR 600.315(c)(1) ("SSC scientific advice and recommendations to its Council are based on scientific information that the SSC determines to meet the guidelines for best scientific information available SSCs may conduct peer reviews or evaluate peer reviews to provide clear scientific advice to the Council. Such scientific advice should attempt to resolve conflicting scientific information, so that the Council will not need to engage in debate on technical merits. Debate and evaluation of scientific information is the role of the SSC.")

⁶ *Id.* at 600.315(c)(2) & (3).

⁷ *Id.* at 600.315(a)(6)(vii).

⁸ *Id.*

⁹ *See id.*; *see also id.* at 600.315(b).

¹⁰ *Id.* at 600.315(c)(3) & (b)(2).

¹¹ *Id.* at 600.315(b)(2)(iii).

reviewing products of higher novelty or controversy, a greater degree of independence is necessary to ensure credibility of the peer review process.¹²

Regarding conflicts of interest, under the NS2 guidelines, potential reviewers who are not federal employees must be screened for conflicts of interest in accordance with the NOAA Policy on Conflicts of Interest for Peer Review Subject to the Office of Management and Budget's Peer Review Bulletin, or other applicable rules or guidelines.¹³ Under this policy, "peer reviewers must not have any conflicts of interest with the scientific information, subject matter, or work product under review, or any aspect of the statement of work for the peer review."¹⁴ In this context, "a conflict of interest is any financial or other interest which conflicts with the service of the individual on a review panel because it: could significantly impair the reviewer's objectivity, or could create an unfair competitive advantage for a person or organization."¹⁵

The NS2 guidelines further state that individuals cannot be appointed to review panels if they have a conflict of interest relevant to the review function.¹⁶ Conflicts of interests "include, but are not limited to, the personal financial interests and investments, employer affiliations, and consulting arrangements, grants, or contracts of the individual and of others with whom the individual has substantial common financial interests, if these interests are relevant to the functions to be performed."¹⁷

However, "[f]or reviews requiring highly specialized expertise, the limited availability of qualified reviewers might result in an exception when a conflict of interest is unavoidable; in this situation, the conflict must be promptly and publicly disclosed."¹⁸

Peer reviewers who are federal employees must comply with all applicable federal ethics requirements.¹⁹

¹² *Id.*

¹³ *Id.* at 600.315(b)(2)(ii); see also NOAA Conflict of Interest Policy for Non-Government Peer Reviewers of Influential Scientific Information, available at <https://www.noaa.gov/organization/information-technology/policy-oversight/information-quality/noaa-conflict-of-interest-policy-for-non-government-peer-reviewers-of-influential-scientific>.

¹⁴ 50 CFR 600.315(b)(2)(ii)(A).

¹⁵ *Id.* See also NOAA Conflict of Interest Policy for Non-Government Peer Reviewers of Influential Scientific Information, available at <https://www.noaa.gov/organization/information-technology/policy-oversight/information-quality/noaa-conflict-of-interest-policy-for-non-government-peer-reviewers-of-influential-scientific>.

¹⁶ 50 CFR 600.315(b)(2)(ii)(B).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 600.315(b)(2)(ii).

SSC BSIA Recommendations

As described in the prior section, the SSC can conduct a peer review as part of the process to provide advice on whether information might represent BSIA.²⁰ The SSC can also make a BSIA recommendation without conducting a formal peer review; for example, the SSC can review the information, including peer reviews conducted by others, to assess whether the scientific information should be considered the BSIA.²¹ Per the NS2 Guidelines, the criteria that the SSC should consider when evaluating BSIA are: relevance, inclusiveness, objectivity, transparency and openness, timeliness, verification and validation, and peer review, as appropriate.²²

The NS2 guidelines do not include any specific criteria for avoiding conflicts of interest in the BSIA determination process, but the SSC should take the same precautions as it would to ensure a peer review is free from conflicts of interest. SSC members should consider recusing themselves from voting on a BSIA recommendation if they have any conflicts of interest with the scientific information, subject matter, or work product under review, subject to the exception noted in the following paragraph for conflicts that are unavoidable due to the need for highly specialized expertise and the limited availability of SSC members. Conflicts can be evaluated under the same standards described in the NOAA conflict policy for peer review and the NS2 guidelines. Following those standards, a conflict of interest is a financial or other interest that conflicts with the service of the individual in the review function because it could significantly impair the person's objectivity or could create an unfair competitive advantage for a person or organization.²³ Conflicts of interest could relate to the personal financial interests and investments, employer affiliations, and consulting arrangements, grants, or contracts of the individual and of others with whom the individual has substantial common financial interests, if these interests are relevant to the functions to be performed.²⁴

The NS2 guidelines have a limited exception from the mandatory recusal for "reviews requiring highly specialized expertise." In that instance, "the limited availability of qualified reviewers might result in an exception when a conflict of interest is unavoidable; in this situation, the conflict must be promptly and publicly disclosed." 50 CFR 600.315(b)(2)(ii)(B). Care should be taken to evaluate whether an individual should participate in the BSIA recommendation. If a conflict of interest is unavoidable due to the need for highly specialized expertise and the limited availability of SSC members with such expertise, an exception may be made after the conflict of interest is disclosed promptly and publicly.

²⁰ *Id.* at 600.315(c)(1). As noted in footnote 4, although the SSC helps identify and ensure that conservation and management measures are based on BSIA, it ultimately is NMFS's responsibility to approve conservation and management measures and certify that the decisions are consistent with BSIA.

²¹ *Id.*

²² *Id.* at 600.315(a)(6)(i)-(vii).

²³ NOAA Conflict of Interest Policy for Non-Government Peer Reviewers of Influential Scientific Information, *available at* <https://www.noaa.gov/organization/information-technology/policy-oversight/information-quality/noaa-conflict-of-interest-policy-for-non-government-peer-reviewers-of-influential-scientific>.

²⁴ *Id.*

In the case of SSC BSIA recommendations, if an SSC member or related or affiliated individuals or entities participated in developing or reviewing the scientific information, under the Council's guidance set forth herein, and subject to the potential exception for highly specialized reviews noted above, that person should disclose the affiliation and consider recusing himself or herself from voting on the BSIA recommendation, if that person's affiliation with the research could compromise his or her objectivity. Although the SSC member should consider recusing himself or herself from voting on the question of BSIA, during the discussions about the scientific information, the affected SSC member may answer questions and provide expertise and feedback. To safeguard the objectivity of the BSIA review, the affected SSC member should avoid opining directly on whether the information is BSIA.

SSC members should keep in mind whether their participation in a BSIA recommendation would benefit them in some way relative to others. SSC members should consult with the Chair of the SSC, the Council's Executive Director, and NOAA's Office of General Counsel if they have any questions about whether their participation in BSIA review and recommendation presents an unfair competitive advantage or otherwise presents a conflict of interest.

SSC Management Recommendations and Advice

The SSC is mandated by statute to provide its Council ongoing scientific advice for fishery management decisions. Once the SSC has completed a peer review or otherwise made a BSIA recommendation, the SSC will discuss the appropriate management recommendations based on the information. The Council believes that SSC members who recused themselves from the peer review process or BSIA recommendation should be able to participate in subsequent discussions about the advice based on this information and may make recommendations and vote in those discussions. For example, a recused SSC member can participate in discussions about the appropriate acceptable biological catch recommendation based on a stock assessment or whether to recommend that the Council take particular action to protect identified habitat areas. In these conversations, SSC members should be mindful to avoid the appearance of conflicts of interest, which can erode trust in the Council process, and should continue to disclose their interest in the underlying scientific information, as applicable.

Based on the above, the Council has developed the following best practices related to conflicts of interest and the appearance of conflicts of interest.

Best Practices to Avoid Conflicts of Interest and Appearance of Conflicts of Interest

1. Disclosure of Financial Interests.
 - a. As required under MSA, each appointed member of the Caribbean Council's SSC must complete a Statement of Financial Interest.²⁵
 - b. Under the Statement of Financial Interest, each SSC member must disclose any financial interest that the member or certain related entities holds in any

²⁵ MSA 302(g)(1)(D), 16 U.S.C. 1852(g)(1)(D); MSA 302(j)(2), 16 U.S.C. 1852(j)(2).

harvesting, processing, lobbying, advocacy, or marketing activity²⁶ that is being, or will be undertaken within any fishery over which the Council has jurisdiction. In particular, the SSC member must disclose the stated financial interests held by that individual; the individual's spouse, minor child, or partner; and any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee.²⁷

- c. An individual being considered for appointment to the SSC must file the Statement of Financial Interest with the Regional Administrator for the Southeast Regional Office of the National Marine Fisheries Service (NMFS) within 45 days prior to appointment.²⁸
 - d. If the financial interest of the SSC member or the other individuals described above substantially changes, or if the SSC member or other individuals acquire new financial interests, the SSC member must file an updated disclosure with the Regional Administrator for the Southeast Regional Office of NMFS within 30 days.²⁹
 - e. SSC members must update their Statement of Financial Interest annually and file that update with the Regional Administrator for the Southeast Regional Office of NMFS by February 1 of each year.³⁰
 - f. SSC member Statements of Financial Interest will be made on forms provided by NMFS³¹ and will be submitted to NMFS and maintained.³²
2. Conflicts of Interest and Appearance of Conflicts of Interest
- a. The SSC does not make management decisions, but rather provides advice to support the Council's management decisions. The Council's management decisions are further subject to approval by the Secretary of Commerce.
 - b. The rules of conduct applicable to Council members that seek to avoid conflicts of interest and mismanagement (MSA 302(j)(7), 16 U.S.C. 1852(j)(7); 50 CFR 600.225 & 50 CFR 600.235(c)) do not apply to SSC members.
 - c. The Caribbean Council has selected persons to serve on its SSC because of their experience and expertise in matters affecting fisheries in the U.S. Caribbean. SSC members may have participated in or may be participating in scientific research or studies that could support fisheries management in the U.S. Caribbean. The Caribbean Council seeks to leverage these individuals' expertise and rely on their guidance during SSC deliberations on the scientific information that could support management while avoiding conflicts of interest.
 - d. Although SSC members are not subject to Council member conflict of interest rules, as described in Section 3 below, the National Standard 2 guidelines

²⁶ A "financial interest in harvesting, processing, lobbying, advocacy, or marketing" is defined in 50 CFR 600.235(a).

²⁷ MSA 302(j)(2), 16 U.S.C. 1852(j)(2); *see also* 50 CFR 600.235(a) & (b)(1).

²⁸ 50 CFR 600.235(b)(6).

²⁹ MSA 302(g)(1)(D), 16 U.S.C. 1852(g)(1)(D); MSA 302(j)(4), 16 U.S.C. 1852(j)(4); 50 CFR 600.235(b)(6).

³⁰ 50 CFR 600.235(b)(6).

³¹ MSA 302(g)(1)(D), 16 U.S.C. 1852(g)(1)(D); MSA 302(j)(5)(A), 16 U.S.C. 1852(j)(5)(A).

³² MSA 302(g)(1)(D), 16 U.S.C. 1852(g)(1)(D); 50 CFR 600.235(b)(8).

address conflicts of interest in the context of peer reviews, and these best practices seek to avoid conflicts of interest when the SSC makes recommendations regarding what constitutes the best scientific information available, or other recommendations.³³

3. Conflict of Interest and Recusal Standards

a. Peer Review

- i. The Council may request that the SSC as a body provide a peer review of a stock assessment or other scientific information that may be used for management.
- ii. The SSC as a body may conduct a peer review when evaluating whether scientific information is BSIA.
- iii. When the SSC is acting as the peer review body, an SSC peer reviewer must not have any conflicts of interest with the scientific information, subject matter, or work product under review, or any aspect of the statement of work for the peer review, except as provided in section 3.a.vi., below.
- iv. For purposes of this requirement, a conflict of interest is any financial or other interest which conflicts with the service of the individual on a review panel because it could significantly impair the reviewer's objectivity, or could create an unfair competitive advantage for a person or organization.³⁴
- v. Conflicts of interest could relate to the personal financial interests and investments, employer affiliations, and consulting arrangements, grants, or contracts of the individual and of others with whom the individual has substantial common financial interests, if these interests are relevant to the functions to be performed.³⁵
- vi. In some instances, a conflict cannot be avoided, for example, "reviews requiring highly specialized expertise" might have a limited pool of potential reviewers, meaning conflicts cannot be avoided. In this situation, the conflict must be promptly and publicly disclosed.³⁶
- vii. To ensure the objectivity and independence of the peer review, if an SSC member or related entity has served as the analytical lead, principal investigator, or co-principal investigator or had any direct participation as a member of the analytical team, has a financial or other interest that could significantly impair his or her objectivity, or where the peer review could create an unfair competitive advantage or financial consequence to

³³ See Section 3.a.vi. regarding when conflicts of interest cannot be avoided in the peer review context.

³⁴ 50 CFR 600.315(b)(2)(ii)(A); NOAA Conflict of Interest Policy for Non-Government Peer Reviewers of Influential Scientific Information, *available at* <https://www.noaa.gov/organization/information-technology/policy-oversight/information-quality/noaa-conflict-of-interest-policy-for-non-government-peer-reviewers-of-influential-scientific>.

³⁵ 50 CFR 600.315(b)(2)(ii)(B).

³⁶ *Id.*

the SSC member, the affected SSC member may not participate in the peer review and must recuse himself or herself from the review and decisions, unless this is a “review requiring highly specialized expertise” for which conflicts cannot be avoided (see Section 3.a.vi, above).³⁷

viii. The affected SSC member could be made available to answer questions about the research under review, but cannot be involved in developing the review report or conducting the review.

b. Best Scientific Information Available (BSIA)

- i. The SSC makes preliminary determinations of whether information available for management is BSIA.
- ii. If the SSC is conducting a peer review of a stock assessment or other study to determine whether it meets the technical standards in the subject area and is BSIA, the SSC must follow the procedures in Section 3.a., above, to avoid a conflict of interest and ensure the objectivity and independence of the review.
- iii. If the SSC is reviewing other information, for example, a peer-reviewed study, to determine if it is BSIA, any SSC member who participated in the development or review of the work product or any other review of the information, or any SSC member who has an affiliation with an entity or individual who participated in the development or review of the information, should disclose the connection and consider recusing himself or herself from voting on the BSIA recommendation if the person’s affiliation with the research could compromise his or her objectivity. The affected SSC member should avoid putting forward or seconding a motion or vote on a motion as to whether the information is BSIA. However, if a conflict of interest is unavoidable due to the need for highly specialized expertise and the limited availability of SSC members with such expertise, an exception may be made after the conflict of interest is disclosed promptly and publicly.
- iv. If recused from the final recommendations, when discussing whether the information is BSIA, the affected SSC member may participate in the technical discussions and answer any questions to aid in the SSC’s review. To safeguard the objectivity of the BSIA review, however, the affected SSC member should avoid expressing an opinion on whether the information is BSIA.

c. Other recommendations

- i. When the SSC is discussing research priorities or making recommendations as to projects that the Council might support, SSC members should publicly disclose their interest or involvement in any such projects, including the relationship of any related entities, and any

³⁷ *Id.* at 600.315(b)(2)(ii)(A) & (b)(2)(iii); NOAA Conflict of Interest Policy for Non-Government Peer Reviewers of Influential Scientific Information, available at <https://www.noaa.gov/organization/information-technology/policy-oversight/information-quality/noaa-conflict-of-interest-policy-for-non-government-peer-reviewers-of-influential-scientific>.

potential financial or other benefit that might occur if the SSC supports the project.

- ii. SSC members should consider recusing themselves from any vote on whether the Council should support, fund, or otherwise pursue a project that the SSC member or related entity is involved in or has an interest in.
- iii. The affected SSC member can engage in discussions about the research, including providing an opinion on the technical and strategic merits of the research, but should avoid participating in any motion or vote to recommend such projects.

4. Management Advice Following Peer Review or Best Available Scientific Information Recommendation

- a. Once the peer review is complete or the SSC has otherwise made a recommendation as to whether particular information is BSIA, any SSC member who has recused him or herself under the standards above, may engage in discussions about how the information could be used to support management advice and recommendations. The recused SSC member may make motions and vote on any related management advice, for example recommendations for catch limits or size limits that are informed by the peer reviewed science and the BSIA.

5. Assistance in Applying These Standards

- a. SSC members should consult with the Chair of the SSC, the Council's Executive Director, and NOAA's Office of General Counsel if they have any questions about whether their participation in any SSC function significantly impairs their objectivity, presents an unfair competitive advantage, or otherwise presents a conflict of interest.