

North Pacific Fishery Management Council

Dan Hull, Chairman
David Witherell, Interim Executive Director



605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone (907) 271-2809

Fax (907) 271-2817

Visit our website: <http://www.npfmc.org>

June 20, 2017

Mr. Adam Issenberg
Chief, Fisheries and Protected Resources Section
NOAA General Counsel
1315 East West Highway
SSMC3-15132
Silver Spring, MD 20910

Dear Mr. Issenberg:

Stemming from our recent CCC meeting discussions, and our own Council discussions at our June meeting, please consider the following comments regarding recent recusal determinations for the North Pacific Council. We have previously commented on the application of the ‘attribution’ policy used by the agency, which attributes all fishing activities of a company even partially owned by an associated company, in calculating an individual Council member’s interests. We continue to believe that this attribution policy is inconsistent with the intent of the conflict of interest statute and regulations, and should be revisited by the agency.

However, a more recent recusal determination raises even more serious concerns with the interpretation and application of recusal standards. In April 2017 Mr. Simon Kinneen was recused from the Council’s action to re-designate essential fish habitat (EFH) in the Bering Sea/Aleutian Islands. Citing from the recusal regulations, *“A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual...”*.

Two aspects of the EFH recusal determination for Mr. Kinneen appear to defy any logical tie to the language of the regulations, (1) the lack of any close causal link, and (2) the lack of any benefit at all resulting from the Council’s decision in the first place. The Council’s designation of EFH does not result in any change in groundfish harvest associated with the Council member’s interest. The designation of EFH does not change the total amount of harvest, the timing of harvest, the location of harvest, or the distribution of harvest (or processing) among industry participants. Given that there is zero effect on fish harvesting or processing, it is inconceivable that there could be any determination that there is a “substantial and disproportionate benefit to the Council member’s interest” in the fishery. Given the lack of any apparent effect of the Council’s EFH action on anyone’s financial interest, the question of “close causal link” appears moot, but we also question how the agency could possibly determine any causal link at all.

We would further note an additional point that we request you consider. The current interpretation/application of recusal standards results in outcomes which are at odds with successful implementation of the Community Development Quota (CDQ) program. Because of the CDQ groups’ successful leveraging of their CDQ allocations, in developing ownership of fishing and processing activities, the recusal standards are resulting in those Council members employed by CDQ groups being unable to participate in

critical management decisions. More broadly, the current interpretations are at odds with the basic design and intent of the Magnuson-Stevens Act – to allow affected stakeholders a voice in Council decisions, but with an overall Council make-up intended to lessen any possibility that the financial interest of any particular Council member could exert too great an influence on Council decisions.

We respectfully request that the agency, both NOAA GC and NOAA Fisheries, revisit the conflict of interest regulations, and the policy interpretations of those regulations, in order to effect a more logical and predictable application of recusal determinations. If revisions to the Policy and Procedural Directives are to be developed, we also request an opportunity to review them prior to them being finalized by the agency.

Sincerely,

A handwritten signature in blue ink that reads "Dan Hull". The signature is written in a cursive, flowing style.

Dan Hull
Chairman

CC: Mr. Chris Oliver
Mr. Samuel Rauch
Ms. Lisa Lindeman
Ms. Lauren Smoker