



North Pacific Fishery Management Council

Simon Kinneen, Chair | David Witherell, Executive Director
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March 1, 2019

Alan Risenhoover, Director
Office of Sustainable Fisheries
National Marine Fisheries Service
1315 East-West Highway
SSMC3
Silver Spring, MD 20910

Dear Mr. Risenhoover:

On behalf of the North Pacific Council, I am providing comments on the proposed rule to change regulations that address disclosure of financial interests by voting members of the US regional fishery management councils. The Council very much appreciates the agency's efforts to address financial disclosure regulations, and notes that the proposed rule has addressed many of the concerns the Council has previously raised on this issue.

The Council supports the proposed regulations describing a multi-step test to determine if an individual is required to be recused from voting. The Council agrees with the clarification and proposed definition of "close causal link", including the allowance for exceptions under which a designated official may determine that a close causal link does not exist. The Council also agrees with removing the 10% recusal threshold from the definition of "expected and substantially disproportionate benefit" and use the threshold to define the term "significant financial interest".

The Council appreciates NMFS willingness to amend regulations regarding the attribution principles when calculating if a voting member has a significant financial interest in a fishery. The Council agrees with the distinction between direct ownership and indirect ownership (i.e., a subsidiary), and that these two types of ownership should be treated differently. As proposed, an affected individual would have a direct ownership interest when the individual wholly or partially owns (or is employed by) a company, business or vessel.

As proposed, a designated official will fully attribute ALL covered activity if the affected individual is employed by, or owns 50% or more of a company, because this ownership would be considered a controlling interest in the company. For ownership less than 50%, NMFS proposes to attribute the proportional level of interest to the owner. The Council disagrees with the 50% controlling interest threshold, as it ignores complex ownership and management arrangements of many Alaska fishing companies (e.g., CDQ and family owned companies), and incorrectly equates a majority ownership with having a different level of financial interest. The difference in a council member's desire to vote for an action that would benefit his/her asset would be substantially higher in a scenario comparing a 40% ownership over a 3% ownership vs a 51% ownership and a 49% ownership. Benefits to the affected individual are more directly proportional to his/her ownership at all levels. An individual owning 51% of a company (or having a controlling interest) doesn't receive 100% of the profits/benefits, and therefore should not be ascribed all the covered activity of that company in calculating significant financial interest.

For these reasons, the Council recommends that proportional attribution apply to at all levels of ownership. In other words, if an affected individual owns 70% of a fishing company, the designated official would apply 70% of that company's catch in determining a significant financial interest threshold.

The Council agrees with the applying a partial attribution approach to indirect ownership interests, as this captures the attenuated nature of indirect ownership. The proposed rule also places the burden of providing reliable information on the affected Council member, and in the absence of such information, 100 percent interest would be assumed. The Council agrees with this approach.

The Council suggests that NMFS provide additional clarification as to how indirect employment (such as consultants) is considered in the determination of significant financial interest. If an individual is an industry consultant paid by a fishing company or group of companies, would they be considered to have a significant financial interest much like an employee? The Council notes the apparent inconsistency in assigning full attribution to an employee of a company, but no attribution to a director of an association or organization, which may have been explicitly formed to influence council decisions and whose director's annual compensation may be directly related to council decisions.

Lastly, the Council applauds NMFS for increasing transparency on the process and outcomes of recusal determinations. A recusal determination procedure handbook, combined with a standardized process of reporting the results to the public, increases transparency and trust in the Council process.

Sincerely,



Simon Kinneen
Chairman
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cc: Regional Fishery Management Councils
Mr. Chris Oliver, Assistant Administrator, NOAA Fisheries