

North Pacific Fishery Management Council

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MEMORANDUM

TO: Council Coordination Committee (CCC)

FROM: Chris Oliver/Dan Hull – NPFMC

DATE: June 16, 2015

SUBJECT: Council member recusals/MSA reauthorization

The North Pacific Council is interested in discussing the subject of Council member recusal, given the recent NOAA GC determination that two members had to recuse themselves on a very important Council action regarding reductions in the halibut prohibited species cap (or bycatch cap) for the groundfish fisheries in the Bering Sea/Aleutian Islands (BSAI). Our Council is interested in other Councils' experiences with recusal determinations, whether the recusals regulations are being interpreted and applied consistently across regions, and whether there exists the opportunity for national-level changes in the implementing regulations, or in the MSA itself, which would create a more logical and appropriate grounds for Council member recusal.

A primary issue is the way in which NOAA GC calculates a member's financial interests in determining whether the 10% thresholds are exceeded. The following example helps to explain this issue: Joe Councilman works for Fishing Company A, which owns 50% of Fishing Company B, which in turn owns 3% of Fishing Company C. NOAA GC uses ALL harvesting and processing activity by ALL three of these companies in determining whether Joe Councilman exceeds any of the 10% thresholds. The North Pacific Council believes that this is an unfair and illogical interpretation of the recusal regulations, and results in unintended recusals of Council members. The North Pacific Council believes that NOAA GC should use only the amount of harvesting or processing activity equivalent to the Council member's percentage of ownership. Using this proportional share approach, NOAA GC would use 100% of the harvesting and processing activity of Fishing Company A, 50% of the harvesting and processing activity of Fishing Company B, and 1.5% of the harvesting and processing activity of Fishing Company C to determine whether Joe Councilman exceeds any of the thresholds.

The North Pacific Council may be seeking regulatory or statutory changes, possibly through the reauthorization of the MSA, to achieve a more appropriate application of the financial disclosure and recusal process. Specific potential remedies discussed by the Council include: (1) MSA revisions (possibly a requirement to disclose financial interest, but not require recusal); (2) revision of the implementing regulations (for example, to adjust the existing 10% rule, OR to adjust the calculation of that 10% vis-à-vis partial company ownership, or vis-à-vis including all groundfish vs a sector of the groundfish fishery when Council decisions are sector-by-sector). The North Pacific Council is requesting discussion of this topic by the CCC under either the MSA reauthorization agenda item, or other business.