

----- Forwarded Message -----

Subject:Re: letter RE recusal issue

Date:Tue, 18 Aug 2015 16:16:40 -0400

From:Samuel Rauch - NOAA Federal <samuel.rauch@noaa.gov>

To:Chris Oliver <chris.oliver@noaa.gov>

CC:Jim Balsiger <jim.balsiger@noaa.gov>, Lisa Lindeman <Lisa.Lindeman@noaa.gov>, Adam Issenberg <Adam.Issenberg@noaa.gov>, Lauren Smoker <Lauren.Smoker@noaa.gov>, Alan Risenhoover <Alan.Risenhoover@noaa.gov>, Alesia Read <Alesia.Read@noaa.gov>, Eileen Sobeck <Eileen.Sobeck@noaa.gov>, Brandon Sousa - NOAA Federal <brandon.sousa@noaa.gov>

Chris,

Thank you for the letter and your request that NMFS consider revisiting the recusal regulations or issuing policy guidance which would clarify the interpretation of the disclosure of financial interest and recusal provisions of the MSA. It is certainly true that recusals were a significant issue at the most recent North Pacific Fishery Management Council meeting. As I discussed with the CCC during the June 2015 meeting, one of the things that we have talked about internally is that the issues raised in your June 16th letter and at the CCC meeting may well be amenable to a change in our regulations.

As I indicated at the CCC meeting, I have tasked Alan Risenhoover and the Office of Sustainable Fisheries (OSF) staff to start evaluating this issue. Specifically, OSF will examine 50 CFR 600.235(c)3 to determine whether the current iteration is sufficient in enacting the voting restrictions outlined in MSA 302(j)(7); whether a change in the regulation is necessary; or whether the agency can issue regulatory guidance that can help clarify any confusions the Councils have in how this regulation is implemented. This includes reviewing the utility of the 10% threshold for determining an “expected and substantially disproportionate benefit”. OSF should be able to provide an update on this effort at the 2016 Interim CCC meeting.

Sam

On Wed, Aug 5, 2015 at 6:40 PM, Chris Oliver <chris.oliver@noaa.gov> wrote:
Sam et al - please see attached.

-Chris

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Samuel D. Rauch III
Deputy Assistant Administrator for Regulatory Programs
National Marine Fisheries Service/NOAA
U.S. Department of Commerce
301-427-8000

North Pacific Fishery Management Council

Dan Hull, Chairman
Chris Oliver, Executive Director



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August 5, 2015

Mr. Sam Rauch
Deputy Assistant Administrator
NOAA Fisheries
1315 East West Highway
Silver Spring, Maryland

Dear Mr. Rauch:

I am writing to follow up on discussions we had at our recent Council Coordination Committee (CCC) meeting regarding Council member recusals. Specifically, in light of recent, questionable recusal determinations which resulted in two North Pacific Council members being unable to vote on an important halibut bycatch management action, and one member unable to vote on an important salmon bycatch action, we requested that NMFS consider revisiting the recusal regulations, or consider the issuance of policy guidance which would rectify what we view as an unintended, and unfortunate, consequence of the current interpretation of the recusal regulations.

The general issues with the recusal process include a lack of transparency and predictability. The specific issue is how NOAA GC calculates a member's financial interests in determining whether the 10% thresholds are exceeded. I am attaching for reference my memorandum on this issue which I prepared for the recent CCC meeting, and which provides a detailed explanation of what we feel is an illogical and unfair interpretation of the recusal regulations. At that CCC meeting this June, you committed to further review of this issue within the agency, and we are respectfully requesting clarification of the nature and timing of such an internal review, and how the Council(s) might be of assistance in developing solutions. Our Council believes that the current application of the ownership standards is contrary to the intent of the Magnuson-Stevens Act, and will continue to unnecessarily undermine the full participation of Council members on important fishery management actions.

We appreciate your willingness to undertake a review of this issue, and eagerly await a response from the agency on potential step to rectify this issue.

Respectfully,



Chris Oliver
Executive Director

Enclosures: 1

cc: Jim Balsiger
Lisa Lindeman
Adam Issenberg
Council Executive Directors

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.