



Maria Davis - NOAA Affiliate <maria.davis@noaa.gov>

Fwd: REVISED Recusal Determination for the Council's January-February 2020 Council Meeting

Maria Davis - NOAA Affiliate <maria.davis@noaa.gov>
Draft

Sun, Jan 26, 2020 at 11:18 AM

From: Demian Schane - NOAA Federal <demian.schane@noaa.gov>

Date: January 24, 2020 at 5:58:01 PM AKST

To: Simon Kinneen <simon@nsedc.com>, graylight@alaskan.net, craigc@starboats.com, douglas.vincent-lang@alaska.gov, cora.campbell@silverbayseafoods.com, nicolek@pspafish.net, rachel.baker@alaska.gov, jonathon_gerken@fws.gov, karla.bush@alaska.gov, i.fishjensen@gmail.com, dhanson@psmfc.org, slmarx@msn.com, tweitwmt@dfw.wa.gov, yvonne.c.yang@uscg.mil, allison.j.caputo@uscg.mil, David Witherell <david.witherell@noaa.gov>, Diana Evans - NOAA Affiliate <diana.evans@noaa.gov>, kennydown@comcast.net, Jim Balsiger <jim.balsiger@noaa.gov>, Glenn Merrill <glenn.merrill@noaa.gov>, weinsteinis@state.gov

Cc: Kristen Gustafson - NOAA Federal <kristen.l.gustafson@noaa.gov>, Adam Issenberg - NOAA Federal <adam.issenberg@noaa.gov>, Lauren Smoker <lauren.smoker@noaa.gov>, Josh Fortenbery <joshua.fortenbery@noaa.gov>, Molly Watson - NOAA Federal <molly.watson@noaa.gov>, John Lepore <john.lepore@noaa.gov>

Subject: REVISED Recusal Determination for the Council's January-February 2020 Council Meeting

Dear Council Members:

My office recently received new information which, upon examination, requires us to amend our previous recusal determination (dated January 22, 2020) for agenda item C3--Central GOA Rockfish Reauthorization. The other determinations (the initial email is below) remained unchanged.

After receiving our January 22, 2020 recusal determination for the C3 agenda item, Cora Campbell contacted my office to inquire whether that determination included a recent change in her financial interests. Specifically, Ms. Campbell informed us that her employer has recently acquired a financial interest in a shorebased processor that processes Central Gulf of Alaska rockfish. My office had not yet received Ms. Campbell's updated financial disclosure form, which included that information. Therefore, we had not considered that information in making the initial recusal determination. We greatly appreciate Ms. Campbell's quick action to contact us and ensure that we had all relevant information.

Regulations at 50 C.F.R. § 600.235(c) prohibit a Council member from voting on any Council decision that would have a significant and predictable effect on a financial interest disclosed in his or her financial disclosure report. A Council decision will be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the decision and an expected and substantially disproportionate benefit to the financial interest in harvesting of any affected individual. An "expected and substantially disproportionate benefit" includes a greater than 10-percent interest in the marketing or processing of the total harvest of the fishery or sector of the fishery in question. 50 C.F.R. § 600.235(c)(3)(iii).

On the final agenda for the January-February 2020 Council Meeting, item C3 -- Central GOA Rockfish Reauthorization -- is a "Council decision" under 50 C.F.R. § 600.235(a), and there is a close causal link between the decision and the financial interests of Ms. Campbell's employer. Based on 2019 processing data, the processor in which Ms. Campbell's employer acquired a financial interest processed more than ten percent of the total harvest of Central GOA rockfish in 2019. Thus, the regulations require that Ms. Campbell be recused from voting on the Central GOA Rockfish Reauthorization action.

According to the regulations at 50 C.F.R. § 600.235(g), any Council member may file a written request to NOAA General Counsel for a review of this determination. Requests for review should be emailed to Kristen Gustafson, Deputy General Counsel, NOAA Office of the General Counsel, at Kristen.L.Gustafson@noaa.gov. A request for review must be received by Ms. Gustafson by February 3,

2020. Please see the regulations at 50 C.F.R. § 600.235(g) for more information on requests for review. B3 Recusal Determination
You can access those regulations at the [Electronic Code of Federal Regulations](#).

Please contact me if you have any questions or would like more information.

Thank you.

On Wed, Jan 22, 2020 at 4:56 PM Demian Schane - NOAA Federal <demian.schane@noaa.gov> wrote:
Dear Council Members:

NOAA General Counsel, Alaska Section, has examined the North Pacific Fishery Management Council's January-February 2020 draft agenda for recusal issues.

The following two final actions are not "Council decisions" as that term is defined at 50 C.F.R. § 600.235(a) and therefore no recusal determinations are required: (1) C1 -- Charter Halibut Annual Management Measures for Area 3A--Final Action; and (2) C2 -- Norton Sound Red King Crab harvest specification.

The following final action constitutes a "Council decision": (1) C3 -- Central GOA Rockfish Reauthorization--Final Action. As a result, the recusal regulations at 50 C.F.R. § 600.235 apply.

We have determined that none of the appointed Council Members (Members Campbell, Cross, Down, Jensen, Kimball, Kinneen, and Mezirow) is required to be recused from participating in, or voting on, this final action under 50 C.F.R. § 600.225 or § 600.235. The action is not a "particular matter primarily of individual concern" under 50 C.F.R. § 600.225(b)(9)(ii), and none of the recusal thresholds at 50 C.F.R. § 600.235(c) is exceeded.

Although the regulations do not require a voting recusal for the C3 agenda item, a Council member may voluntarily recuse himself or herself under 50 C.F.R. § 600.235(d) if he or she believes that a Council decision would have a significant and predictable effect on that individual's financial interest.

According to the regulations at 50 C.F.R. § 600.235(g), any Council member may file a written request to NOAA General Counsel for a review of this determination. Requests for review should be emailed to Kristen Gustafson, Deputy General Counsel, NOAA Office of the General Counsel, at Kristen.L.Gustafson@noaa.gov. A request for review must be received by Ms. Gustafson by February 1, 2020. Please see the regulations at 50 C.F.R. § 600.235(g) for more information on requests for review. You can access those regulations at the [Electronic Code of Federal Regulations](#).

Please contact me if you have any questions or would like more information.

Thank you.

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Demian A. Schane
Chief, Alaska Section
NOAA, Office of General Counsel
P.O. Box 21109
Juneau, AK 99802-1109
907-586-7027 (direct)
907-586-7263 (facsimile)
demian.schane@noaa.gov



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Please note that the NPFMC is moving! Our new address is:
1007 West 3rd Ave., Suite 400
Anchorage, AK 99501

1/26/2020

National Oceanic and Atmospheric Administration Mail - Fwd: REVISED Recusal Determination for the Council's January-February 2020 ...

Maria Davis
Communications/IT Specialist
North Pacific Fishery Management Council
907-271-2808
www.npfmc.org

B3 Recusal Determination