



## CENTRAL BERING SEA FISHERMEN'S ASSOCIATION

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The Central Bering Sea Fishermen's Association (CBSFA) appreciates the opportunity to speak to the Council regarding the structural concerns created by the recusal approach used by NOAA General Counsel's office. We would raise the following issues for the Council's consideration and the record:

**The NPFMC recusal process is flawed, because it is inconsistent, unpredictable, lacks transparency, and as the Council has already stated, fails to support the intent of the Magnuson-Stevens Act.**

- The standards for recusal do not appear to be consistently applied.
  - As applied, the decision could result in blocking future participation by several NPFMC members in most of the issues affecting the fishery because the definition of the affected fishery is so broad.
  - This particular decision is troubling for several reasons. As written, it rests on a speculation of how a Council could make its decision and provides no analysis of what would happen if the Council's process is different. As the State's letter noted, "each option allows the Council to make a decision for an individual sector." Indeed, the action will require the Council to make a decision for each sector. But the decision of the Designated Official does not address this circumstance. Accordingly, when the Council makes decisions about these individual sectors, members with otherwise possibly recusable interests in those sectors are not prohibited from voting by this decision, but members with NO interests in those individual sectors would be precluded from voting at all because of their overall interests as attributed to them.
  - The rule requires assessment of interests in the "fishery or sector of the fishery in question" and the Designated Official elected to only look at the former – the fishery, reasoning that prudence requires as broad a definition as possible. If this is truly the standard, then the analysis should have looked at both, because both the fishery as a whole AND sectors are at issue here.
  - We use this decision as an example because it is the decision at hand, but the structural concerns it illuminates are not limited to this decision.
- The process is unpredictable.
  - The *application* of the standards for recusal appear to be unpredictable, so that States are unable to exercise their nomination rights with any degree of confidence that their representatives will be permitted to participate in important decisions, or that individual

members can make that same determination, or that the public can exercise their right to engage with their State about how they are being represented.

- We found nothing in the regulations, statute, or guidance that would have alerted the State, individual members, or the public that such an interpretation was going to occur. Interpretations with the potential for such significance should be clear and public so that stakeholders can have notice of the rules' application before they make decisions, such as nominations.
- We would commend to the Council the concerns raised by Senator Murkowski in her recent letter to the Assistant Administrator:

The recent Recusal Examination for the June 2015 NPFMC decision is particularly troubling. Of the eleven voting members of the NPFMC and the seven members who have been determined to be affected by the decision on BSAI halibut PSC limits, the only two required to recuse themselves from the vote are Mr. David Long and Mr. Simon Kinneen, two Alaskan members. With such an important final decision on the table, this creates an inequity and lack of representation of Alaskan interests. The Council, by nature, is comprised of many stakeholders in the fishery. The recusal of two Alaskans before such an important vote seems to damage the core structure of the process.

- The process lacks transparency.
  - Because the recusal process occurred so late in the process, it has the functional effect of insulating the process from public review and comment. This lack of effective transparency should cause grave concern to the Council.
  - Moreover, the decision also retroactively elevates the EA/IRFA from its proper role as a supporting document to a controlling role that determines who can vote on an ultimate decision. If this is truly the approach that will be taken for all future actions of the Councils, the determination of how the recusal analysis will be undertaken should be established in advance, not post hoc.
  - We have listened to the Council's prior discussion, and we concur with the concerns raised about this being a "gray area" and this again speaks to the inability to predict in advance where the boundaries are. And with regard to how this is handled nationwide as is supposed to be evident in the reports to Congress, we attempted to look at the exact issue that several members have already raised, and there is insufficient public information in those reports to obtain any clarity whatsoever.

We make these comments with appreciation and respect for the difficulty in the analysis that NOAA General Counsel's office must make, and hope that they will be used to create a more consistent, predictable, and transparent process that honors the intent of the Magnuson-Stevens Act and the dedication of the Council and all of its members. Thank you.