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B2 Recusal Determinations
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**Recusal Examination for the June 2015 North Pacific Fishery Management Council
decision concerning BSAI Halibut Prohibited Species Catch Limits¹**

Designated Officials for the June 2015 meeting: Lauren Smoker and John Lepore

Statutory and Regulatory Background

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) and regulations at 50 CFR 600.225 and 600.235 govern the ability of a Council member to participate in and/or vote on a Council decision.

Regulations at 50 CFR 600.225 include the rules of conduct for Council members and employees. Section 600.225(b) states: "Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. In addition to abiding by the applicable Federal conflict of interest statutes, both members and employees of the Councils must comply with the following standards of conduct." Nine standards are listed. Section 600.225(b)(9)(ii) states: "No Council member may participate personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest, even if the interest has been disclosed in accordance with § 600.235."

Under section 302(j)(7)(A) of the MSA and 50 CFR 600.235(c)(1), "No affected individual may vote on any Council decision that would have a significant and predictable effect on a financial interest disclosed in his/her report filed under paragraph (b) of this section."

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, processing, lobbying, advocacy, or marketing of any affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee, relative to the financial interests of other participants in the same gear type or sector of the fishery. Section 302(j)(7)(A) of the MSA; 50 CFR 600.235(c).

"Expected and substantially disproportionate benefit" is defined at 50 CFR 600.235(c)(3) as "a quantifiable positive or negative impact with regard to a matter likely to affect a fishery or sector of the fishery in which the affected individual has a significant interest, as indicated by:

¹ The Designated Officials discussed this analysis and the conclusions reached with the Department of Commerce Office of General Counsel, Ethics Law and Programs Division (DOC GC Ethics Division). The DOC GC Ethics Division concurred with the analysis and the Designated Officials' conclusions.

- (i) A greater than 10-percent interest in the total harvest of the fishery or sector of the fishery in question;
- (ii) 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; or
- (iii) Full or partial ownership of more than 10 percent of the vessels using the same gear type within the fishery or sector of the fishery in question.”

In calculating an affected individual’s financial interest in the fishery or sector of the fishery in question, we attribute all harvesting, processing, and marketing activity of a wholly- or partially-owned company, including subsidiary companies, to the affected individual. We have determined that this interpretation of the 10% thresholds is consistent with the provisions of the Magnuson-Stevens Act and the regulations at 50 CFR 600.235(c)(3).² In keeping with our interpretation and our past practice, this analysis attributes all activity of a wholly- or partially-owned company or subsidiary company to the affected individual.

Under 50 CFR 600.235(e), an affected individual who is recused from voting may participate in Council deliberations relating to the decision, after notifying the Council of the voting recusal and identifying the financial interest that would be affected. The affected individual also may state for the record how he or she would have voted. 50 CFR 600.235(f)(4).

An affected individual who is not recused from voting but who believes that a Council decision would have a significant and predictable effect on his or her financial interests may, at any time before a vote is taken, voluntarily recuse himself or herself by announcing to the Council an intent not to vote on the decision and identifying the financial interest that he or she believes is affected. 50 CFR 600.235(d).

Determination of affected individuals for a Council decision on BSAI halibut PSC limits

Of the 11 voting North Pacific Fishery Management Council (Council) members, **seven members** (Cross, Dersham, Down, Fields, Hull, Kinneen, and Long) **are affected individuals** in that they were appointed by the Secretary of Commerce to serve as voting members of the Council in accordance with section 302(b)(2) of the MSA.

In accordance with section 302(j)(2) of the MSA and 50 CFR 600.235(b)(1) and (b)(2), these seven members have disclosed and reported their financial interests in harvesting, processing, marketing, lobbying, or advocacy activity by filing with the Executive Director of the Council their annual, updated NOAA Form 88-195, Statement of Financial Interests.

Description of the action and the Council’s decision

Among other things, “Council decision” includes Council approval of “a fishery management plan (FMP) or FMP amendment” and a Council “request for amendment to regulations implementing an FMP.” 50 CFR 600.235(a). The Council is currently scheduled to take final action at its June 2015 meeting on whether and to what extent the current halibut prohibited

² Letter from Lois J. Schiffer, General Counsel, NOAA Office of General Counsel, to Simon Kinneen, dated April 8, 2015.

species catch (PSC) limits apportioned to various sectors operating within the Bering Sea and Aleutian Islands (BSAI) groundfish fishery should be reduced. Current halibut PSC limits for these sectors are established in Federal regulation, and in some cases, in the Fishery Management Plan for Groundfish of the BSAI Management Area (BSAI FMP). A Council action to reduce these limits will require the Council to submit to the Secretary an amendment to the BSAI FMP, a regulatory amendment, or a combination of both FMP and regulatory amendment. Therefore, the Council's action on BSAI halibut PSC limits is a "Council decision."

The Council's February 2015 motion, which represents the action before the Council, includes the following alternatives and options for BSAI halibut PSC limits:

Alternative 1: No action

Alternative 2: Amend the BSAI Groundfish FMP to revise halibut PSC limits as follows (*more than one option can be selected*).

Option 1 Reduce halibut PSC limit for the BSAI Trawl Limited Access Sector by:
a) 10 percent; b) 20 percent; c) 30 percent; d) 35 percent; e) 40 percent; f) 45 percent; or g) 50 percent

Option 2 Reduce halibut PSC limit for the Amendment 80 Sector by:

Suboption 1 Reducing the halibut PSC limit to Amendment 80 cooperatives by:
a) 10 percent; b) 20 percent; c) 30 percent; d) 35 percent; e) 40 percent; f) 45 percent; or g) 50 percent

Suboption 2 Reducing the halibut PSC limit to the Amendment 80 limited access fishery by:
a) 10 percent; b) 20 percent; c) 30 percent; d) 35 percent; e) 40 percent; f) 45 percent; g) 50 percent; or h) 60 percent

Option 3 Reduce halibut PSC limit for Pacific cod hook and line catcher vessel sector by:
a) 10 percent; b) 20 percent; c) 30 percent; d) 35 percent; e) 40 percent; f) 45 percent; or g) 50 percent

Option 4 Reduce halibut PSC limit for Pacific cod hook and line catcher processor sector by:
a) 10 percent; b) 20 percent; c) 30 percent; d) 35 percent; e) 40 percent; f) 45 percent; or g) 50 percent

Option 5 Reduce the CDQ halibut PSQ limit by:
a) 10 percent; b) 20 percent; c) 30 percent; d) 35 percent; e) 40 percent; f) 45 percent; or g) 50 percent

- Option 6 Reduce halibut PSC limit for other non-trawl (i.e., hook and line catcher vessels and catcher processors targeting anything except Pacific cod or sablefish) by:
- a) 10 percent; b) 20 percent; c) 30 percent; d) 35 percent; e) 40 percent; f) 45 percent; or g) 50 percent

As explained in section 1.3 of the January 2015 Initial Review Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for the BSAI halibut PSC action:

Halibut PSC limits in the BSAI Groundfish FMP and Federal regulations are specified at 3,675 mt of halibut mortality for trawl gear, and 900 mt of halibut mortality for non-trawl fisheries. A proportion of each of these overall limits is allocated to the CDQ program as a prohibited species quota (PSQ) reserve, which is not apportioned by gear or fishery. A proportion of the trawl PSC limit is specifically allocated to Amendment 80 (including an unallocated amount representing a phased-in reduction in that fleet's halibut usage following implementation of the Amendment 80 program). The remaining trawl and non-trawl PSC limits are then annually allocated in the harvest specifications process to the fishery categories specified in regulations, for annual or seasonal durations. Groundfish pot gear is exempted from halibut PSC limits because (1) halibut discard mortality rate and total mortality associated with this gear type is relatively low, and (2) existing gear restrictions for pots (e.g., halibut excluders) are intended to further reduce halibut PSC mortality. Groundfish jig gear is also exempted, because of their low overall catch of groundfish in the BSAI.

Determination of the “fishery or sector of the fishery” affected by a Council decision on BSAI halibut PSC limits

We have determined that the fishery or sector of the fishery affected by the Council's action is the entire BSAI groundfish fishery except for those fisheries that are exempt from halibut PSC limits (i.e., pot and jig groundfish fisheries) and those fisheries specifically excluded by the Council (i.e., the sablefish fixed gear fishery).³ This analysis will refer to the fishery or sector of the fishery affected by the Council's decision on BSAI halibut PSC limits as the “combined BSAI groundfish fishery.”

The fishery or sector of the fishery is determined by the action before the Council. If the Council is considering an action that will affect the harvest of one species using one specific gear type, then the fishery or sector of the fishery is that one species and gear type. A Council member's percentage of harvest of that species with that gear type is considered when determining whether the Council's action will have an expected and substantially disproportionate impact for the Council member relative to the other participants who harvest that species with that gear type. Conversely, if the Council is considering an action that will affect the harvest of multiple species

³ Specifically, the BSAI groundfish fisheries that are not affected by the Council's action are: (1) the fixed gear sablefish fishery; (2) the Atka mackerel jig fishery; (3) the Pacific cod pot catcher processor fishery; (4) the Pacific cod fishery for pot catcher vessels equal to or greater than 60 feet in length overall (LOA); and (5) the Pacific cod jig fishery.

with a combination of gear types, then the fishery or sector of the fishery is an aggregate of the relevant species and gear types. In this case, a Council member's aggregate percentage of harvest of those species with those gear types is considered when determining whether the Council's action will have an expected and substantially disproportionate impact for the Council member relative to the other participants who harvest those species with those gear types.

The action being considered by the Council would reduce the amount of halibut PSC that could be caught by participants in the identified sectors while fishing for BSAI groundfish species. Alternative 2, the only action alternative being considered by the Council, includes almost all of the BSAI groundfish fisheries prosecuted by trawl and hook-and-line gears for potential reductions to halibut PSC limits. Although there are separate options for individual sectors within Alternative 2, all of the options are within one alternative that is described as an FMP amendment "to revise halibut PSC limits." Alternative 2 states that "more than one option can be selected," indicating that one, some, or all of the options and identified sectors could be selected for halibut PSC reductions. The combining of all of the sectors into one alternative appears to provide the Council with maximum flexibility to adopt halibut PSC limit reductions for one or more identified sectors in relation to halibut PSC reductions for other identified sectors. While the structure of options within Alternative 2 is sector-specific, the alternative is an aggregate approach to halibut PSC limit reductions for all identified fisheries, gear types and sectors. Recusal analysis by individual sector would not be consistent with the action being considered by the Council or the structure of Alternative 2 because the only action alternative includes all of the specified sectors. For these reasons, we have determined that the fishery or sector of the fishery affected by the Council's action on BSAI halibut PSC limits is the aggregate of all BSAI groundfish fisheries and gear types affected by the Council's action, hereinafter referred to in this analysis as "the combined BSAI groundfish fishery."

The 2014 fishing year is the most recent fishing year for which complete information is available. In determining the total amount of groundfish available for harvest in the combined BSAI groundfish fishery, we used the total allowable catch (TAC), initial TAC (ITAC), or adjusted final TAC or ITAC for each BSAI groundfish fishery in the combined BSAI groundfish fishery.⁴ In 2014, the total amount of groundfish available for harvest in the combined BSAI groundfish fishery was 1,975,764 mt. Therefore, the 10% threshold for determining whether a Council member has a significant interest in the total harvest, or the marketing or processing of the total harvest, of the combined BSAI groundfish fishery is 197,576.4 mt.⁵ Because the Council's action on BSAI halibut PSC limits applies to the combined BSAI groundfish fishery, any affected individual who exceeds this aggregated 10% threshold of harvesting, processing, or marketing in the combined BSAI groundfish fishery is recused from voting on any aspect of the Council's decision on BSAI halibut PSC limits. Conversely, any affected individual who does not exceed this aggregated 10% threshold of harvesting, processing, or marketing in the combined BSAI groundfish fishery is not recused from voting on any aspect of the Council's decision on BSAI halibut PSC limits.

⁴ Attachment 1 is a list of all trawl and hook-and-line fisheries that we have included in the combined BSAI groundfish fishery as well as the total amount available for harvest in 2014 for each fishery.

⁵ The threshold for full or partial ownership of more than 10% of the vessels participating in the combined BSAI groundfish fishery is addressed separately for each affected Council member.

Determination as to whether the BSAI halibut PSC limits action is a particular matter primarily of individual concern for any Council member under 50 CFR 600.225

The action being considered by the Council is not a particular matter primarily of individual concern for any affected individual. The alternatives and options being considered by the Council apply to a large number of participants in the combined BSAI groundfish fishery.

Individual determinations as to whether there is an expected and substantially disproportionate benefit of a Council decision on BSAI halibut PSC limits for any affected individual under 50 CFR 600.235

Mr. Cross

According to Mr. Cross' financial disclosure statement dated May 1, 2015, Mr. Cross is employed with Aleutian Spray Fisheries, Inc. (ASF).⁶ ASF has financial interests in various aspects of Federal commercial fisheries conducted within the Council's jurisdiction. Specific to this action, ASF owns, in whole or in part, five companies that participate in the combined BSAI groundfish fishery with the following vessels: the *Siberian Sea*, the *US Liberator*, the *Muir Milach*, the *Golden Dawn*, the *Nordic Star*, and the *Starbound*.⁷

According to guidance received from the DOC GC Ethics Division, "In a case where the FMC member discloses the subsidiary company of his outside employer, no determination needs to be made as to whether the subsidiary's financial interests would affect the financial interests of the parent. As previously noted, any matter that affects the financial interests of a subsidiary also affects the financial interests of its parent."⁸ Because these subsidiaries of ASF are engaged in harvesting and processing activities in the combined BSAI groundfish fishery, their activity is attributable to ASF and considered in the recusal determination for Mr. Cross.

Mr. Cross' financial interests harvested a total of 76,811 mt of groundfish from the combined BSAI groundfish fishery in 2014.⁹ This total amount is less than the 10% harvesting threshold of 197,576.4 mt. Additionally, Mr. Cross' financial interests do not exceed the 10% threshold for whole or partial ownership of vessels participating in the combined BSAI groundfish fishery

⁶ Mr. Cross is also a part owner and employee of a consulting firm, and is a board member for a number of cooperatives and associations. Some of these organizations have members that directly participate in the combined BSAI groundfish fishery. However, NMFS does not allocate exclusive harvest privileges directly to these non-profit organizations. Therefore, these financial interests do not factor into this recusal determination for Mr. Cross.

⁷ ASF's remaining financial interests are involved in BSAI crab fisheries that will not be affected by the Council action on BSAI halibut PSC.

⁸ See Attachment 2 (Email from David Maggi, Chief, Ethics Law and Programs Division, Office of General Counsel, Department of Commerce, to Lisa Lindeman and Lauren Smoker, dated January 27, 2009).

⁹ According to NMFS catch data for 2014 BSAI total groundfish catch for trawl and hook-and-line gear by target, the vessels owned by Mr. Cross' financial interests harvested the following amounts of groundfish in the combined BSAI groundfish fishery: the *Siberian Sea* [REDACTED]; the *US Liberator* [REDACTED]; the *Muir Milach* [REDACTED]; the *Golden Dawn* [REDACTED]; the *Nordic Star* [REDACTED]; and the *Starbound* [REDACTED].

because there are more than 60 vessels that participate in the combined BSAI groundfish fishery. Given this information, we have determined that Mr. Cross does not have a significant interest in the combined BSAI groundfish fishery affected by the BSAI halibut PSC action and that the action will not result in an expected and substantially disproportionate impact on Mr. Cross' financial interests. Because the BSAI halibut PSC action will not have a significant and predictable effect on Mr. Cross' financial interests, he is not required to recuse himself from voting on any aspect of the BSAI halibut PSC action under 50 CFR 600.235.

Mr. Dersham

According to Mr. Dersham's financial disclosure statement dated January 19, 2015, Mr. Dersham has no financial interest in the harvest of BSAI groundfish, or in the marketing or processing of BSAI groundfish. Mr. Dersham discloses no full or partial ownership of any vessels that participate in the BSAI groundfish fisheries. Because the NPFMC's decision on BSAI halibut PSC will not result in an expected and substantially disproportionate benefit to Mr. Dersham's listed financial interests (of which there are none), no significant and predictable effect from a Council decision on BSAI halibut PSC exists for any of Mr. Dersham's disclosed financial interests (of which there are none). Therefore, Mr. Dersham is not required to recuse himself from voting on any aspect of the BSAI halibut PSC action under 50 CFR 600.235.

Mr. Down

According to Mr. Down's financial disclosure statement dated February 23, 2015, Mr. Down is employed with Blue North Fisheries, Inc.¹⁰ and is a partial owner of New Blue North LLC. These companies have financial interests in various aspects of Federal commercial fisheries conducted within the Council's jurisdiction. According to Mr. Down, his employer is a vessel management company, which manages, but does not own, several hook-and-line catcher processor vessels that are used to participate in the combined BSAI groundfish fishery: the *Blue Attu*, the *Blue Ballard*, the *Blue Gadus*, and the *Blue Pacific*.¹¹ Although Blue North Fisheries, Inc., does not own the vessels it manages, there are connections between the companies that own the vessels and Mr. Down's employer.¹²

We were unable to reach a determination as to whether these vessels and their harvesting and processing activity should be attributed to Blue North Fisheries, Inc. and considered in the recusal determination for Mr. Down prior to issuance of this recusal analysis. However, we have

¹⁰ Mr. Down also discloses that he has an ownership interest in Blue North Fisheries, Inc., as well as several other companies, that will fully vest with the sale of the company or his retirement on June 1, 2027.

¹¹ Mr. Down explained that Blue North Fisheries Inc. hires crew for the vessels it manages, purchases parts for the vessels, makes sure the vessels are in compliance with regulatory requirements, etc., and that the vessel owners pay Blue North Fisheries Inc. a fee for these management services.

¹² These connections include: (1) the Blue North Fisheries, Inc. website refers to the vessels as "our fishing vessels"; (2) the companies share the same business address; (3) the companies have common owners; and (4) Blue North Fisheries Inc. is providing services only to those vessels within the hook-and-line catcher processor sector that are owned by companies that have common ownership with Blue North Fisheries, Inc.

determined that Mr. Down is not recused from voting on the BSAI halibut PSC limits action regardless of whether these vessels and their harvesting and processing activity are attributable to Blue North Fisheries, Inc. for the following reasons.

If these vessels and their harvesting and processing activity are not attributable to Blue North Fisheries, Inc., then Mr. Down's financial interests do not exceed any of the thresholds for determining significant interest in the combined BSAI groundfish fishery because his financial interests did not harvest, process, or market groundfish from the combined BSAI groundfish fishery in 2014. The action will not result in an expected and substantially disproportionate impact on Mr. Down's financial interests, and Mr. Down is not recused from voting on any aspect of the BSAI halibut PSC action under 50 CFR 600.235.

If these vessels and their harvesting and processing activity are attributable to Blue North Fisheries, Inc., these vessels harvested [REDACTED] groundfish from the combined BSAI groundfish fishery in 2014.¹³ This total amount is less than the 10% harvesting threshold of 197,576.4 mt. Additionally, ownership in these four vessels does not exceed the 10% threshold for whole or partial ownership of vessels participating in the combined BSAI groundfish fishery because there are more than 40 vessels that participate in the combined BSAI groundfish fishery. Given this information, we have determined that even if these vessels and their harvesting and processing activity are attributable to Blue North Fisheries, Inc. Mr. Down does not have a significant interest in the combined BSAI groundfish fishery affected by the BSAI halibut PSC action and the action will not result in an expected and substantially disproportionate impact on Mr. Down's financial interests. Because the BSAI halibut PSC action will not have a significant and predictable effect on Mr. Down's financial interests under either scenario, he is not recused from voting on any aspect of the BSAI halibut PSC action under 50 CFR 600.235.

Mr. Fields

According to Mr. Fields' financial disclosure statement dated February 6, 2015, Mr. Fields has no financial interest in the harvesting of the combined BSAI groundfish fishery, or the marketing or processing of groundfish harvested in the combined BSAI groundfish fishery. Mr. Fields discloses no full or partial ownership of any vessels that participate in the combined BSAI groundfish fishery. Because the NPFMC's decision on BSAI halibut PSC will not result in an expected and substantially disproportionate benefit to Mr. Fields' listed financial interests, no significant and predictable effect from a Council decision on BSAI halibut PSC exists for any of Mr. Fields' disclosed financial interests. Therefore, Mr. Fields is not required to recuse himself from voting on any aspect of the BSAI halibut PSC action under 50 CFR 600.235.

¹³ According to NMFS catch data for 2014 BSAI total groundfish catch for trawl and hook-and-line gear by target, the vessels managed by Blue North Fisheries, Inc. harvested the following amounts of groundfish in the combined BSAI groundfish fishery: the *Blue Attu* [REDACTED]; the *Blue Ballard* [REDACTED]; the *Blue Gadus* [REDACTED] and the *Blue Pacific* [REDACTED].

Mr. Hull

According to Mr. Hull's financial disclosure statement dated January 7, 2015, Mr. Hull has no financial interest in the harvesting of the combined BSAI groundfish fishery, or the marketing or processing of groundfish harvested in the combined BSAI groundfish fishery. Mr. Hull discloses no full or partial ownership of any vessels that participate in the combined BSAI groundfish fishery. Because the NPFMC's decision on BSAI halibut PSC will not result in an expected and substantially disproportionate benefit to Mr. Hull's listed financial interests, no significant and predictable effect from a Council decision on BSAI halibut PSC exists for any of Mr. Hull's disclosed financial interests. Therefore, Mr. Hull is not required to recuse himself from voting on any aspect of the BSAI halibut PSC action under 50 CFR 600.235.

Mr. Kinneen

According to Mr. Kinneen's financial disclosure statement dated January 14, 2015, Mr. Kinneen is employed with Norton Sound Economic Development Corporation (NSEDC). NSEDC is a Community Development Quota (CDQ) entity. NMFS annually allocates specified amounts of certain BSAI groundfish from the CDQ reserve to NSEDC for its exclusive use. NSEDC also wholly owns Siu Alaska Corporation (Siu Alaska) and KDS, Inc.¹⁴ Siu Alaska owns, in whole or in part, a number of companies. Specific to this action, Siu Alaska is part owner of three companies that participate in the combined BSAI groundfish fishery: Glacier Fish Company (Glacier Fish), Glacier Bay Fisheries LLC, and BSAI Partners LLC.¹⁵ Glacier Fish has three trawl catcher processor vessels (the *Alaska Ocean*, the *Pacific Glacier*, and the *Northern Glacier*), Glacier Bay Fisheries has one hook-and-line catcher processor vessel (the *Glacier Bay*), and BSAI Partners LLC has several trawl catcher vessels (the *Alaska Rose*, the *Bering Rose*, the *Destination*, the *Great Pacific*, and the *Sea Wolf*). Additionally, Glacier Fish is part owner of Iquique US, LLC. Iquique US, LLC owns four trawl catcher processor vessels (the *Arica*, the *Cape Horn*, the *Rebeca Irene*, and the *Unimak*) that participate in the combined BSAI groundfish fishery.

According to guidance received from the DOC GC Ethics Division, "In a case where the FMC member discloses the subsidiary company of his outside employer, no determination needs to be made as to whether the subsidiary's financial interests would affect the financial interests of the parent. As previously noted, any matter that affects the financial interests of a subsidiary also affects the financial interests of its parent."¹⁶ Because these four subsidiaries of NSEDC (Glacier Fish, Iquique US LLC, Glacier Bay Fisheries LLC and BSAI Partners LLC) are engaged in harvesting and processing activities in the combined BSAI groundfish fishery, their activity is attributable to NSEDC and considered in the recusal determination for Mr. Kinneen.

¹⁴ KDS, Inc. participates in the BSAI crab fisheries, which are not affected by the Council's action on BSAI halibut PSC.

¹⁵ One of Siu Alaska's other companies participates in the BSAI crab fisheries, which are not affected by the Council's action on BSAI halibut PSC. The remaining companies process and/or market BSAI groundfish from the combined BSAI groundfish fishery. However, because Mr. Kinneen's financial interests exceed the 10% threshold for total harvest in the combined BSAI groundfish fishery, we do not need to determine these companies' level of processing and marketing.

¹⁶ See Attachment 2.

Mr. Kinneen's financial interests harvested a total of 261,092 mt of groundfish from the combined BSAI groundfish fishery in 2014.¹⁷ This total amount is greater than the 10% total harvest threshold of 197,576.4 mt, indicating that Mr. Kinneen has a significant interest in the combined BSAI groundfish fishery affected by the BSAI halibut PSC action and demonstrating that the action will result in an expected and substantially disproportionate impact on Mr. Kinneen's financial interests. Therefore, the BSAI halibut PSC action will have a significant and predictable effect on Mr. Kinneen's financial interests, and he is recused from voting on any aspect of the BSAI halibut PSC action under 50 CFR 600.235.¹⁸ Although Mr. Kinneen is recused from voting, he may participate in all aspects of the Council's deliberations relating to the action after he notifies the Council of the voting recusal and identifies the financial interests that are affected. Mr. Kinneen also may state for the record how he would have voted on the action.

Mr. Long

According to Mr. Long's financial disclosure statement dated January 5, 2015, Mr. Long is employed as a captain and fish master with Glacier Fish Company (Glacier Fish). Glacier Fish owns three vessels (the *Alaska Ocean*, the *Pacific Glacier*, and the *Northern Glacier*) that participate in the combined BSAI groundfish fishery. Given Mr. Long's financial interest in Glacier Fish, its harvesting and/or processing activity is considered in the recusal determination for Mr. Long.

Glacier Fish is partly owned by Siu Alaska Corporation and Nippon Suisan USA, Inc., both of which participate in the combined BSAI groundfish fishery. Additionally, Glacier Fish is part

¹⁷ According to NMFS catch data, NSEDC [REDACTED] CDQ groundfish from the combined BSAI groundfish fishery in 2014. NMFS catch data for 2014 BSAI total groundfish catch for trawl and hook-and-line gear by target show that Glacier Fish vessels harvested the following amounts of non-CDQ groundfish in the combined BSAI groundfish fishery in 2014: the *Alaska Ocean* [REDACTED]; the *Pacific Glacier* [REDACTED]; the *Northern Glacier* [REDACTED]. Although Glacier Fish vessels harvested CDQ groundfish in 2014, this harvest was NSEDC CDQ groundfish and has already been attributed to Mr. Kinneen. According to NMFS catch data for 2014 BSAI total groundfish catch for trawl and hook-and-line gear by target, the *Glacier Bay* harvested [REDACTED] from the combined BSAI groundfish fishery in 2014. This amount includes non-CDQ catch as well as CDQ catch [REDACTED], a CDQ entity that is separate from NSEDC. NMFS catch data for 2014 BSAI total groundfish catch for trawl and hook-and-line gear by target show that BSAI Partners LLC vessels harvested the following amounts of non-CDQ groundfish in the combined BSAI groundfish fishery: the *Alaska Rose* [REDACTED]; the *Bering Rose* [REDACTED]; the *Destination* [REDACTED]; the *Great Pacific* [REDACTED]; and the *Sea Wolf* [REDACTED]. None of the BSAI Partners LLC vessels harvested CDQ groundfish in 2014 according to NMFS catch data. Finally, NMFS catch data for 2014 BSAI total groundfish catch for trawl and hook-and-line gear by target show that Iquique US LLC vessels harvested the following amounts of non-CDQ groundfish in the combined BSAI groundfish fishery: the *Arica* [REDACTED]; the *Cape Horn* [REDACTED]; the *Rebeca Irene* [REDACTED]; and the *Unimak* [REDACTED]. As with BSAI Partners LLC, none of the Iquique US, LLC vessels harvested CDQ groundfish in 2014 according to NMFS catch data.

¹⁸ Because Mr. Kinneen's financial interests exceed the 10% threshold for total harvest in the combined BSAI groundfish fishery, a determination as to whether Mr. Kinneen's interests exceed the vessel ownership threshold is unnecessary.

owner of Iquique US, LLC. Iquique US, LLC owns four vessels (the *Arica*, the *Cape Horn*, the *Rebeca Irene*, and the *Unimak*) that participate in the combined BSAI groundfish fishery. Neither Siu Alaska Corporation nor Nippon Suisan USA, Inc. owns a controlling interest in Glacier Fish, and the entities appear to operate independently from one another. Therefore, the harvesting and processing activities of Siu Alaska Corporation and Nippon Suisan USA, Inc. in the combined BSAI groundfish fishery are not attributed to Mr. Long for this recusal determination.¹⁹ However, Iquique US, LLC is a subsidiary of Glacier Fish. According to guidance received from the DOC GC Ethics Division, “In a case where the FMC member discloses the subsidiary company of his outside employer, no determination needs to be made as to whether the subsidiary’s financial interests would affect the financial interests of the parent. As previously noted, any matter that affects the financial interests of a subsidiary also affects the financial interests of its parent.”²⁰ Because this subsidiary of Glacier Fish is engaged in harvesting and processing activities in the combined BSAI groundfish fishery, its activity is attributable to Glacier Fish and considered in the recusal determination for Mr. Long.

Mr. Long’s financial interests harvested [REDACTED] groundfish from the combined BSAI groundfish fishery in 2014.²¹ This total amount is greater than the 10% harvesting threshold of 197,576.4 mt, indicating that Mr. Long has a significant interest in the combined BSAI groundfish fishery affected by the BSAI halibut PSC action and demonstrating that the action will result in an expected and substantially disproportionate impact on Mr. Long’s financial interests. Therefore, the BSAI halibut PSC action will have a significant and predictable effect on Mr. Long’s financial interests, and he is recused from voting on any aspect of the BSAI halibut PSC action under 50 CFR 600.235.²² Although Mr. Long is recused from voting, he may participate in all aspects of the Council’s deliberations relating to the action after he notifies the Council of the voting recusal and identifies the financial interests that are affected. Mr. Long also may state for the record how he would have voted on the action.

¹⁹ According to guidance received from the DOC GC Ethics Division, a Council decision “that affects the financial interests of a parent company may or may not affect the financial interests of its subsidiary company depending on the relationship between the two entities. ... Factors to consider include, but are not limited to: whether the parent company’s activities are closely tied to those of the subsidiary (e.g., common management or board) [or whether the subsidiary operates independently from the parent]; and whether the subsidiary is wholly-owned or majority owned by the parent.” See Attachment 2.

²⁰ See Attachment 2.

²¹ NMFS catch data for 2014 BSAI total groundfish catch for trawl and hook-and-line gear by target show that the Glacier Fish vessels harvested the following amounts of groundfish (CDQ and non-CDQ) in the combined BSAI groundfish fishery: the *Alaska Ocean* [REDACTED], the *Pacific Glacier* [REDACTED]; and the *Northern Glacier* [REDACTED]. NMFS catch data for 2014 BSAI total groundfish catch for trawl and hook-and-line gear by target show that the Iquique US, LLC vessels harvested the following amounts of non-CDQ groundfish in the combined BSAI groundfish fishery: the *Arica* [REDACTED]; the *Cape Horn* [REDACTED], the *Rebeca Irene* [REDACTED]; and the *Unimak* [REDACTED]. NMFS catch data indicate that the Iquique US, LLC vessels were not used to harvest CDQ groundfish in 2014.

²² Because Mr. Long’s financial interests exceed the 10% threshold for total harvest in the combined BSAI groundfish fishery, a determination as to whether Mr. Long’s interests exceed the vessel ownership threshold is unnecessary.

Attachment 1

Total amount available for harvest in 2014 for each fishery within the combined BSAI groundfish fishery:

BSAI pollock – 1,286,075 mt (used Table 1 from 2014 harvest specifications)

BSAI Pacific cod – 233,429 mt (amounts shown include rollovers during 2014):

A80 sector: 33,631 mt (27,369 for AK Seafood Coop + 6,262 for AK Groundfish Coop)

BSAI TLAS: 48,572 mt (43,107 for trawl CVs + 5,465 for AFA trawl CPs)

Hook-and-line CP sector: 111,516 mt

Hook-and-line CV sector: 12,043 mt (25 mt for over 60' + 12,018 for under 60' hook-and-line/pot)

CDQ sector: 27,167 mt

ICA: 500 mt (for non-trawl gear incidental catch)

BSAI sablefish – 1,038 mt of BSAI trawl sablefish (used ITACs and CDQ from Table 7 in harvest specifications). BSAI fixed gear sablefish fishery specifically excluded from Council action.

BS trawl sablefish: 619 mt (50 for BS CDQ + 569 for non-CDQ ITAC)

AI trawl sablefish: 419 mt (34 for AI CDQ + 385 for non-CDQ ITAC)

Yellowfin sole -- 184,000 mt (used TAC from Table 8 in harvest specifications which includes CDQ, BSAI TLAS, ICA, and A80).

Greenland turbot -- 2,054 mt of Greenland turbot (used 2014 ITACs of 1,805 mt in Table 1 of harvest specifications, plus October 7 reapportionment of 71 mt, plus CDQ allocation of 178 mt).

Arrowtooth flounder -- 23,925 mt (used ITAC of 21,250 mt from Table 1 from harvest specifications, plus CDQ allocation of 2,675 mt).

Kamchatka flounder -- 7,100 mt (used ITAC of 6,035 mt from Table 1 in harvest specifications, plus October 7 reapportionment of 1,065 mt).

Rock sole – 85,000 mt (used TAC from Table 8 in harvest specifications which includes CDQ, BSAI TLAS, ICA, and A80).

Flathead sole -- 24,500 mt (used TAC from Table 8 in harvest specifications which includes CDQ, BSAI TLAS, ICA, and A80).

Alaska plaice – 20,825 mt (used ITAC from Table 1 in harvest specifications).

Attachment 1

Other flatfish – 4,500 mt (used ITAC of 2,253 mt from Table 1 in harvest specifications, plus July 11 reapportionment of 2,247 mt).

Pacific ocean perch --

AI POP: 25,438 mt (used TAC from Table 8 in harvest specifications which includes CDQ, BSAI TLAS, ICA, and A80)

BS POP: 7,684 mt (used ITAC of 6,531 mt from Table 1 in harvest specifications, plus October 7 reapportionment of 1,153 mt)

Total: 33,122 mt

Northern rockfish – 2,405 mt (used 2014 ITAC of 2,205 mt from Table 1 in harvest specifications, plus Nov 17 reapportionment of 200 mt).

Rougheye rockfish – 416 mt (used 2014 final ITAC from Table 2 in harvest specifications).

Shortraker rockfish -- 370 mt (used 2014 final ITAC from Table 2 in harvest specifications).

Other rockfish – 873 mt (used 2014 final ITAC of 773 mt from Table 2 in harvest specifications, plus Nov 17 reapportionment of 100 mt).

Atka mackerel -- 32,230 mt (used Table 4 in harvest specifications as adjusted by Oct 3 reallocation: CDQ of 3,459 mt; ICA of 365 mt, BSAI TLAS of 2,680 mt; and A80 of 25,726 mt; did not include jig gear allocation of 92 mt).

Skates -- 26,600 mt (used ITAC of 22,100 mt from Table 1 in harvest specifications, plus Nov 17 reapportionment of 4,500 mt).

Sculpins -- 4,888 mt (used ITAC from Table 1 in harvest specifications).

Sharks -- 225 mt (used 2014 final ITAC of 125 mt from Table 2 in harvest specifications, plus October 7 reapportionment of 100 mt).

Squids -- 1,764 mt (used ITAC of 264 mt from Table 1 in harvest specifications, plus October 7 reapportionment of 1,500 mt).

Octopuses -- 425 mt (used 2014 final ITAC of 225 mt from Table 2 in harvest specifications, plus Nov 17 reapportionment of 200 mt).

These total to: 1,975,764 mt of groundfish available for harvest in the combined BSAI groundfish fishery

Attachment 2
Lauren Smoker - NOAA Federal <lauren.smoker@noaa.gov>

Guidance Regarding Recusals Relating to Employers and Affiliates of FMC Members

1 message

Maggi, David <dMaggi@doc.gov>

Tue, Jan 27, 2009 at 12:59 PM

To: "Lindeman, Lisa" <Lisa.Lindeman@noaa.gov>, "Smoker, Lauren" <Lauren.Smoker@noaa.gov>

Cc: "Fredericks, Barbara" <bFrederi@doc.gov>, "Jacobi, William" <wjacobi@doc.gov>

This responds to your request for guidance as to the disclosure requirements for Fishery Management Council members concerning outside employers and affiliates

Relevant law

Under 18 U.S.C. § 208, a Federal employee may not participate in any matter affecting the financial interests of an outside employer. If a matter affects the financial interests of a company with which an employer is affiliated (i.e., a parent or subsidiary company), the employee may be barred from participating in the matter, even if the outside employer itself is not a party to the matter. Whether a disqualification applies will depend on the closeness of the relationship between the employer and the affiliated company, as explained below.

Any matter that affects the financial interests of a subsidiary will affect the financial interests of its parent company, so disqualification requirements apply to any matter affecting the interests of a subsidiary to an employer. Because the parent company has an ownership interest in the subsidiary, the parent company's value will increase or decrease as the subsidiary company's value increases or decreases. Accordingly, a Federal employee may not participate in any matter involving Subsidiary Company B if he has outside employment with Parent Company A (unless a legal exception, exemption, or waiver applies).

However, a matter that affects the financial interests of a parent company may or may not affect the financial interests of its subsidiary company, depending on the relationship between the two entities. If the subsidiary operates independently from the parent, the parent company's gains or losses will not necessarily affect the financial interests of the subsidiary. On the other hand, if the parent company's activities are closely tied to those of the subsidiary, then it would be reasonable to conclude that a matter affecting the financial interests of the parent company would also affect the financial interests of the subsidiary company. Factors to consider include, but are not limited to: whether the parent company's activities closely tied to those of the subsidiary (e.g., common management or board); and whether the subsidiary is wholly-owned or majority owned by the parent.

With respect to the general disqualification requirements of 18 U.S.C. § 208, a special exemption exists for a Fishery Management Council member who discloses any financial interest held by any organization (engaged in harvesting, processing, marketing, lobbying, or advocacy relating to the fishery) in which that individual serves as an employee. See Magnuson Stevens Reauthorization Act (MSRA), §§ 302(j)(2) and (j)(8). However, this exemption does not apply to a matter that would have an expected and substantially disproportionate benefit to the member's financial interests (10% or greater interest in a harvesting, marketing, processing, lobbying, or advocacy activity). In such a case, the FMC member may not vote on a matter, but may participate in Council deliberations after proper notification. See MSRA § 302(j)(7)(2) and 50 C.F.R. § 600.235(c)(3).

Guidance

In order to be protected from violating the criminal conflict of interest statute (and in order to take full advantage of the MSRA exemption), FMC members should disclose not only the name of their outside employer, but also the name of any affiliate of the outside employer. If the affiliate's financial interests are affected by a matter in which the FMC member participates, and the affiliate's financial interests affect the financial interests of the FMC member's outside employer, the FMC member is violating the statute if he participates in the matter and does not disclose the affiliate. If the FMC member's outside employer is not affected by the affiliate, there is still no harm in reporting the affiliate on the form.

Case Involving an FMC Member

With regard to the pending case in the North Pacific Fishery Management Council, it is our understanding that the FMC member was employed by Trident, the parent of LFS. Trident is engaged in seafood processing and marketing. LFS is a marine supply company. The member disclosed Trident on NOAA Form 88-195. However, Trident has a greater than 10% interest in the harvest of a fishery that was subject to an FMC action. Therefore, the member was not permitted to vote on any matter affecting the fishery. In order to vote, the member resigned from Trident and became employed shortly thereafter by LFS. The member's employment duties essentially remained the same and LFS and Trident operate out of the same location. LFS is not engaged in any harvesting, processing, or marketing activities in the relevant fishery.

At this time, based on the information provided, the parent company Trident appears to control the subsidiary company LFS. Shortly after the FMC member resigned from Trident, he obtained a position with the company's subsidiary, LFS. Moreover, his duties did not substantially change and the two entities operate from the same location. These factors lead to the conclusion that LFS is controlled by Trident. Accordingly, for conflict of interest purposes, LFS's interests should be considered the same as Trident's interests, so that a matter affecting Trident would also affect LFS. Therefore, the FMC member may not vote on any matter that will have a direct and predictable effect on Trident (with regard to a matter in which Trident has a 10% or greater interest). If he amends his report to list Trident as well as LFS, he may participate in other matters affecting Trident (i.e., matters in which Trident does not have a 10% or greater interest). This conclusion would be altered if a determination is made (using the factors mentioned above, as well as possibly consulting corporate reference manuals) by Government officials that the financial interests of LFS are not affected by the financial interests of Trident.

Disclosing Affiliates – Effect on 10% Rule

As explained below, with respect to the 10% rule, the mere disclosure of an affiliated company does not necessarily mean that company is added to the calculation to determine if the outside employer (or a company in which the member has a financial interest) and the affiliated company's combined interest in the harvest (or other activity) is 10% or greater.

In a case where the FMC member discloses the parent company of an outside employer, an initial determination (using the previously noted factors) must be made as to whether the parent's financial interests would affect the financial interests of the subsidiary.

If the parent company's financial interests affect the financial interests of the subsidiary, a second determination must be made as to whether the affiliate and the subsidiary are engaging in harvesting activities in the same fishery. If so, the interests would be added for the purposes of calculating the 10% total. For example, if the FMC member's outside employer is harvesting yellowfin tuna and the parent company is also harvesting yellowfin tuna, the two interests would be combined for the purpose of determining the outside employer's total interest in the yellowfin tuna harvest.

In a case where the FMC member discloses the subsidiary company of his outside employer, no determination needs to be made as to whether the subsidiary's financial interests would affect the financial interests of the parent. As previously noted, any matter that affects the financial interests of a subsidiary also affects the financial interests of its parent. Thus, the only determination that needs to be made is whether the subsidiary and parent are engaged in harvesting activities in the same fishery.

Note also that if there is a co-operative or other coalition of companies sharing profits, the interests of all members are combined to determine whether the 10% limit is exceeded.

I hope this is helpful.

If you have questions or would like to discuss this, please e-mail me or call me at 202-482-5384.

David Maggi

Chief, Ethics Law and Programs Division

Office of the General Counsel

U.S. Department of Commerce

202-482-5384