



**Western
Pacific
Regional
Fishery
Management
Council**

March 4, 2019

Mr. Alan Risenhoover
Office of Sustainable Fisheries
National Marine Fisheries Service/NOAA
U.S. Department of Commerce
1315 East-West Highway, SSMC3
Silver Spring, MD 20910

RE: Western Pacific Fishery Management Council comments on proposed rule changes that address disclosure of financial interest by, and voting recusal of, council members appointed by the Secretary of Commerce. (NOAA-NMFS-2018-0092)

Dear Mr. Risenhoover:

The Western Pacific Regional Fishery Management Council (Council) continues to raise the issue on the application of Council member recusal determinations and the arbitrary use of the attribution policy that holds “employees” to a higher standard than “owners.” Employees do not have legal control over companies and should not be held to a higher standard than that of a minority owner of a company. The Council sent two letters to the NOAA/NMFS Assistant Administrator on this issue (October 25, 2017 and November 6, 2018) which are attached for the record.

NMFS redefined partial attribution for owners to 50 percent stating it “would more closely align the owner’s actual ownership interest in a company and better reflect the ability to control the company’s activities.” In the case of direct ownership, a council member can own up to 49% of a company without meeting the threshold for recusal. However an employee of that same company would be attributed 100% ownership under the proposed rule and be subject to recusal. NMFS provides the rationale that an employee cannot be “partially” employed and must thus be attributed with 100%. That employee would have less “ability to control the company’s activities” than would a minority owner.

Inclusion of employees in the application of the attribution policy is contrary to approaches used in other programs that differentiate the status between employees and owners. Rationalization programs used in many fisheries distribute quota shares to legal owners, entities or organizations and not employees. If attribution is to be applied to employees, the proposed rule must further define categories of employment (officer, director, etc.) and compensation (commission, bonus, shareholder, etc.) that would lead to significant and direct financial benefit to employees as a result of management actions.

The Magnuson-Stevens Act (MSA) is structured to include individuals as Council members, who by occupation or other expertise, are knowledgeable regarding the commercial or

recreational harvest of fishery resources. The attribution policy, as applied in the Western Pacific, is contrary to the purpose of including industry representatives as Council members and does not achieve the intent of Section 302(j) of the MSA. If applied as proposed, the consequence will lead to all members from industry having to recuse themselves from votes. Recent recusal determinations have prohibited Council members from voting on decisions that in reality have had no "significant and predictable effect" on the Council member's financial interests. For example, a Council member was required to recuse himself on an ACL action in 2018 for one species of bottomfish which represented a small fraction of the United Fishing Agency's (UFA) business and a minor component of the landing from across the State. In reality, this action had no effect on that member's financial interests.

The Council recommends that affected individuals who are employees should not carry the full burden of all harvesting, processing, marketing activity of a company to whom they are employed. The proportional attribution of an employee must be less than that of all owners. Therefore, the regulations governing the voting recusal of council members and application of attribution principles should be modified to remove employees as affected individuals.

Sincerely,

A handwritten signature in black ink, appearing to read "Kitty". The signature is stylized with a large, sweeping initial "K" and a cursive "itty".

Kitty M. Simonds
Executive Director