

#10b

Note: This presentation was prepared in case NOAA General Counsel cannot attend the Council meeting due to the federal shutdown. NOAA GC will give a presentation if they are present.

Financial Disclosure and Recusal Proposed Rule

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Is it a Council
Decision?

Does the
individual have a
financial
interest?

Is there a close
causal link?

Is there an expected
and substantially
disproportionate
benefit?

Is it a Council Decision?

- Approval of an FMP or FMP amendment
- Request for amendment of regulations implementing an FMP
- Finding that an emergency exists
- Comments on FMP or amendment developed by the Secretary

Does the individual have a financial interest?

- *Financial interest in harvesting, processing, lobbying, advocacy, or marketing* (1) includes:

Stock, equity, or other ownership interests or employment with any company engaging in any harvesting, processing, lobbying, advocacy, or marketing activity in any fishery under the jurisdiction of the Council concerned

(Condensed version!)

Is there a close causal link?

- If implementing regulations required, link exists unless:
 - Chain of causation attenuated or speculative
 - No real possibility decision affects individual
- If no implementing regulations, link exists if there is a real possibility that decision will affect financial interests

Is there an expected and substantially disproportionate benefit?

- Does the individual have a significant financial interest?
 - (1) A greater than 10-percent interest in the total harvest of the fishery or sector of the fishery affected by the Council decision;
 - (2) A greater than 10-percent interest in the marketing or processing of the total harvest of the fishery or sector of the fishery affected by the Council decision; or
 - (3) 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 affected by the Council decision.

Attribution Principles (1)

- Direct ownership:
 - Own \geq 50 pct: all harvesting, processing, marketing activity
 - Own $<$ 50 pct: commensurate with individual's percentage of ownership
 - Employee: all harvesting, processing, marketing activity

Attribution Principles (2)

- Indirect ownership (companies owned by an affected individual's company or employer)
 - Commensurate with individual's percentage ownership in company, and company's ownership in the indirectly owned company
- Parent ownership
 - >+50 pct: attribute all
 - <50 pct: attribute none

Attribution Principles (3)

- Associations and Organizations
 - If organization receives harvesting or processing privileges, or is directly engaged in harvesting, processing, or marketing, all activity

Possible Comments

- Clarification of process is welcome
 - Timing for appeals is still an issue
- Support partial attribution provisions
- Does not address recusal for lobbying or advocacy:
when does a lobbying or advocacy relationship
lead to a “significant financial interest?”

Questions and Discussion



**New England
Fishery Management Council**