

To:

T.C. Hoffmann & Associates, LLC / Center for Collaborative Policy

by email, May 25, 2009

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From:

David Helliwell

FV/ Corregidor

California Dungeness crab permit holder

**Re: Dungeness Crab Task Force (DCTF) conflicts of interest, unverifiable voting, and unfairly weighted representation.**

To the DCTF facilitation team and all concerned parties:

As I have previously outlined for Senator Wiggin's staff, the Ocean Protection Council (OPC), and, most recently, for Mr. Ceppos of the facilitation team, there are serious questions of conflict of interest, unverifiable voting, and unfairly weighted representation concerning the elections of DCTF members. Having received no remedy or any clear response on the issues I have been raising, I am submitting a formal complaint with the facilitation team. I am proposing a way in which the voting could be redone that would remedy most of the injustices built into the present DCTF. It would go a long way toward building trust and a sense of ownership in the process, as in your statement of "Conceptual Approach." Please enter my comments into the DCTF public record.

Sincerely,

David Helliwell

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May 25, 2009

To the facilitators of the Dungeness Crab Task Force

I have three main issues I would like to have addressed: conflict of interest, heavy weighting of the vote toward the upper tier, and lack of transparency of the vote. I have been asking for remedy for months with no response to the issues from Senator Wiggin's staff, from the Ocean Protection Council (OPC), and in conversation with one of the facilitation team, Mr. Ceppos, prior to this meeting. I first started questioning the vote with emails to Rachelle Fisher at the OPC as soon as the results came out, which was March 12, 2009.

The first issue is conflict of interest. The state thought it was an important enough issue that the Political Reform Act of 1974 was passed and a commission created with an enforcement division to address it. It would appear that the OPC intends to violate both the letter and the intent of the law and seat the DCTF without addressing conflict of interest issues. The law states that, quote:

“Stripped of legal jargon:

You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests,

and

a significant portion of your jurisdiction does not also feel the important impact on their economic interests.”

The proposed representative of the lower tier in Eureka has exactly these issues. The State is asking Don Standley to vote against his economic best interest, which is neither fair to Don nor the lower tier. In such a scenario the lower tier not only loses a vote, but the upper tier gains one. The Political Reform Act prevents conflicts of interest in two ways -- disclosure and disqualification. (See Gov. Code Sections 87100-87350.) Neither has occurred here.

According to the California Fair Political Practices Act, “Each state and local

agency must adopt a conflict of interest code tailoring the disclosure requirements for each position within the agency to the types of governmental decisions a person holding that position would make.”

DCTF may not qualify as a state agency, but to ignore both the letter and intent of the law seems disingenuous. In light of the stated goal of achieving trust, transparency and ownership in the DCTF, as stated in the bill (SB 1690) and in the guidelines of the facilitator, to proceed in this manner would be the height of hypocrisy and deceit.

The second issue, which also includes a conflict of interest component, is that the production tiers were created with a bias for large producing operations. Not counting Trinidad (20), South of Half Moon (66), and Non-resident (81), which are not tiered, the lower tier of 337 members is represented by 7 votes. The upper tier of 95 members is represented by 7 votes, or 3.5 times as many votes per person as the lower tier. When the tiers were created, the 25,000 lb. criterion removed all of the lower producing and non-producing operations from the equation. After the voting structure for tier representation was in place, the lower producing and non-producing operations were added back in. This maneuver raised the average toward upper tier production, effectively weighting the already over-represented upper tier further towards the biggest producers. (It is important to note that the 25,000 lb criteria for tier division, though discussed, was not an agreement from the fishermen, according to the notes from the steering committee poll sent to Senator Wiggin’s office.)

To add injury to injury, the second conflict of interest occurred when the under-25,000 lb producing permits were dumped back into the lower production tier, causing an unknown number of upper tier boats to acquire votes in the lower tier by virtue of owning a lower tier permit. I know of at least four Eureka lower tier permits that are owned by upper tier fishermen. That is four known lower tier votes that reflect the economic interest of the upper tier. By definition, an upper tier boat receives the majority of its income from its upper tier operation. If the four permits named voted in the lower tier a conflict of interest is unavoidable. The final vote for the lower tier representative in Eureka was 22 to 16. Since we currently can’t establish

who was allowed to vote or the criteria for home port there is no way to verify a very close election. We know for a fact that home ports were miss-assigned.

The remedy is to redo the vote. There are several advantages to taking the time to redo the vote. If the vote is redone, it could clear up transparency of who can vote, where a home port is, and the conflict of interest issue. Confidence in the process would increase, leading to more lasting agreements and less future conflict over the recommendations from the DCTF.

Here are some suggestions on how to address the conflict of interest while working within the wording of SB 1690. Do the vote over, sending a registered letter to all permit holders, defining criteria for what is meant by home port. All permit holders would have an opportunity to respond. Only those respondents who agree to be identified along with their home port may participate in the vote—this would address the transparency issue. An upper tier permit holder cannot represent or vote in the lower tier, which is by definition a conflict of interest.

Using the pounds delivered by permit holders according to L number instead of by permit to determine the tiers would solve both the conflict of interest and some of the weighting of the votes toward the upper tier. Permit holders would then be eligible to vote only in the tiers in which they have the greatest economic interest. This revision would fulfill the letter of SB 1690.

David Helliwell  
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Eureka