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TO: Alaska Board of Fisheries (BOF)
CC: Bristol Bay Economic Development Corporation (BBEDC)
FROM: Dan Coffey
RE: Code of Ethics/Conflicts of Interest
DATE: 2-23-13

I have been asked by BBEDC to review the Alaska Statutes governing conflicts of interest relative to Board Member Vince Webster's participation in the upcoming consideration of a Board generated proposal that would allow stacking of set gillnet gear on the east side of Bristol Bay, while precluding this practice on the west side of Bristol Bay.

The issue presented to me for analysis is whether or not Mr. Webster is precluded from participating in the decision making process associated with the Board generated proposal allowing stacking of set gillnet gear on the east side of Bristol Bay.

The facts, as I understand them to be, are as follows:

- 1) that Mr. Webster is the owner of a Bristol Bay set gillnet limited entry permit;
- 2) that Mr. Webster does not fish on the east side of Bristol Bay;
- 3) that Mr. Webster's shore fishery lease is on the west side in the Naknek-Kvichak district.
 - a) It was apparently on the basis of this fact that it was previously determined that, in so far as putting the Board generated the proposal itself on the agenda was concerned, Mr. Webster was determined not to have a conflict of interest.

- b) That conclusion needs to be reconsidered in light of the information in this Memorandum and because adoption of the Board generated proposal could have a financial benefit to Mr. Webster.

The short answer to the question of participation is that Mr. Webster has a conflict of interest and should not participate in the decision making process associated with the Board generated proposal.

The rationale for this conclusion is as follows:

- 1) Set gillnet limited entry permits in Bristol Bay can be transferred either permanently or by emergency transfer anywhere within Bristol Bay. Thus, Mr. Webster's site being located outside of the area where stacking would be permitted by the Board generated proposal is irrelevant to the question of his conflict of interest
- 2) The Alaska Commercial Fisheries Entry Commission (CFEC) in Report No. 12.02-N dated November 2012 dealing specifically with issues related to stacking permits in Bristol Bay, concluded that "... since January of 2010 [after stacking was approved by the BOF]" that "... the fair market value of set gillnet permits rose 64.2% from \$25,700 to \$42,200." (See page 15 of the Report).
- 3) The Alaska Commercial Fisheries Entry Commission in the same Report that "[t]he estimate value for the S04T [set gillnet permits] permit has significantly increased as a result of permit stacking."
- 4) Alaska Statute AS 39.52.110 Scope of code, states in pertinent part in subsection (a) (3) that "standards of ethical conduct for members of the executive branch [includes members of the BOF] need to distinguish between those **minor and inconsequential** conflicts that are unavoidable in a free society and those conflicts of interest that are **substantial and material.**" [emphasis added]
- 5) Alaska Statute AS 39.52.110 Scope of code, states in pertinent part in subsections (b) (1) and (b) (2) as follows:
 - (b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's
 - (1) personal or financial interest in the matter is **insignificant,;** or." [emphasis added]

(2) action or influence would have ***insignificant or conjectural effect*** on the matter.” [emphasis added]

The CFEC's found that set gillnet stacking has “significantly increased” the fair market value of set gillnet permits. (See paragraph # 3 above). This finding by CFEC is a clear and unequivocal statement that the Board generated proposal has a “*substantial and material*” and that its impact on Mr. Webster is not “*insignificant*”, is not “*minor or inconsequential*” and is not “*conjectural*”.

While all of these statutory terms require a judgment call to be made, when CFEC makes a finding of “significance”, that finding should not be ignored. In fact, the financial aspects of this matter are the only clear indicia of the conflict. If stacking “significantly increased” the value of set gillnet permits, it is highly likely that not allowing this practice to continue will result in a decrease in the value of these permits.

Mr. Webster owns a set gillnet limited entry permit. A proposed regulation would continue to allow stacking of set gillnet permits. Mr. Webster could transfer or sell his permit to a person on the east side of Bristol Bay. The price he is likely to receive upon such a sale would be higher if stacking is permitted and lower if it were not.

If the price of a permit dropped by the same amount it increased, the value of a permit would decreased by \$16,500. Is that an “insignificant” amount of money? I would argue that \$16,500 is a significant amount of money. If the Board agrees, then it should absolutely determine that Mr. Webster has a conflict of interest.

Finally, as most the Board members are aware, I served for six and a half years on the Board of Fisheries. I was chairman twice. As chairman, I was charged with the initial responsibility for determining Board member participation in matters before the Board when conflict of interest issues arose.

In such circumstances, my practice was to base my determinations on the guiding principle that the integrity of the Board of Fisheries should beyond question. If the issue of a conflict of a Board member was a judgment call involving balancing various factors, I almost always decided that the member should not participate. My goal was to protect the Board from allegations that the Board was biased towards Members and unfair to the public.

For a very long time, the Board of Fisheries has been viewed as the very best way to regulate our fisheries. Public participation is extensive and effective. The Board accepts all proposals. The Board listens to all stakeholders. The Board's decision making process is open and public. These are the reasons the Board's decisions are respected, if not liked by all participants.

If trust in the Board's processes were to be lost or questioned by those the Board regulates because of real or apparent bias in favor of Board members, our fisheries and our citizens would no longer be well served by a system that has withstood the test of time since Statehood days. A system that has served the State of Alaska and its fisheries with great success. It would be an absolute shame to take any action that undermined this process.

RESPECTFULLY SUBMITTED this _____ day of February 2013.

Dan K. Coffey, Attorney
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