



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

Department of Law

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**CONFIDENTIAL**

February 22, 2024

**VIA EMAIL ONLY: [john.wood@alaska.gov](mailto:john.wood@alaska.gov)**

John Wood  
Chairman  
Alaska Board of Fisheries  
Alaska Board of Fish and Game  
PO Box 115526  
Juneau, AK 99811

Re: *Advisory Opinion Concerning Board Member participating in Upper Cook Inlet Meeting*

Dear Mr. Wood:

You requested an Advisory Opinion, pursuant to AS 39.52.240(a), to address whether Alaska Board of Fisheries' ("BOF") member Mike Wood's financial interest creates a conflict of interest limiting his ability to participate in the upcoming Upper Cook Inlet Finfish BOF meeting. Mike Wood has disclosed that he possesses a Cook Inlet Set Net Permit and leases a fishing site from the Department of Natural Resources ("DNR"). You have requested advice as to whether Mr. Wood has a conflict of interest such that the Ethics Act precludes him from participating in a proposal for consideration by the BOF. Assuming there is a conflict, you have also asked us to address what steps could be taken to eliminate the conflict.

Based on his disclosure, we conclude that Mr. Wood should refrain from participating in the proposals he identified as having a direct impact on his business. For all other proposals, the Board should follow the procedure set out in the Ethics Act to determine whether Mr. Wood's financial interest creates a significant and material conflict under the Act.

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**BACKGROUND<sup>1</sup>**

The Board of Fisheries consists of seven members serving three-year terms.<sup>2</sup> Members are appointed on the “basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the Board, and with a view to providing diversity of interest and points of view in the membership.”<sup>3</sup> The Board’s main role is to conserve and develop the State’s fishery resources.<sup>4</sup> This involves setting seasons, bag limits, methods and means for the State’s subsistence, commercial, sport, guided sport, and personal use fisheries, and it also involves setting policy and direction for the management of the State’s fishery resources.<sup>5</sup> The Board makes allocative decisions, and the Department of Fish and Game manages based on the Board’s decisions.<sup>6</sup>

The Board has a three-year meeting cycle, meaning it considers proposals for each region once every three years. It uses biological and socioeconomic information provided by the Department of Fish and Game, public comment received from people inside and outside of the state, and guidance from the Department of Public Safety and Department of Law when creating regulations.

Members of the Board are public officers subject to the Executive Branch Ethics Act.<sup>7</sup> The Act expressly provides that Board of Fisheries members “may not act on a matter before the board if the public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial interests in a business or organization relating to fish or game resources.”<sup>8</sup> Alaska Statute 39.52.220 provides the process for making such disclosures and for conferring with the attorney general.

Limited entry permits are issued by the Commercial Fisheries Entry Commission (the CFEC). The CFEC sets a limit on the number of permits that may be issued in specified areas of the state by regulation. The number of permit holders fishing each year

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<sup>1</sup> This section only briefly notes the background for purposes of discussing the application of the Ethics Act. A more complete understanding of the authority and activity of the identified state agencies and the Council may be found on each agency’s website or by consulting with appropriate state officials.

<sup>2</sup> AS 16.05.221(a).

<sup>3</sup> *Id.*

<sup>4</sup> *See* AS 16.05.221; AS 16.05.251.

<sup>5</sup> AS 16.05.251(a).

<sup>6</sup> AS 16.05.251(e).

<sup>7</sup> AS 39.52.110(a); AS 39.52.960(21).

<sup>8</sup> AS 39.52.120(c).

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may be less than the total number of permits for an area. According to the CFEC, as of year-end 2018, there were a total of 735 Cook Inlet Salmon Set Gillnet (SO4H) permit holders.<sup>9</sup>

Under the Limited Entry Act's terms of free transferability, permits may be sold, traded, given away, or inherited. CFEC requires the completion of a survey with each transfer.<sup>10</sup> An SO4H permit allows a holder to fish anywhere in Cook Inlet.

Mike Wood is a member of the Board. He and his wife purchased a Cook Inlet Set Net Permit and a leased fishing site from DNR several years back. Each year they register to fish in the Northern District of Cook Inlet and obtain Catcher/Seller and Direct Marketer licenses. They run a low volume fishing business, catching only what is ordered, and have approximately 120 regular customers. Mr. Wood disclosed that regulations impacting the west-side set-netters have a direct impact on his business. In 2023, the net income for his business was less than \$5,000. The value of the permit itself is approximately \$15,600. Mr. Wood has historically fished in Northern Cook Inlet, but his permit allows him broader access to Cook Inlet.

The BOF will be having its Upper Cook Inlet Finfish meeting on February 23-March 6, 2024. Several proposals are being considered, and in his disclosure to our office, Mr. Wood indicated that he planned to abstain from participation in some of those proposals because of concerns that they will directly affect his fishing area. Those are proposals 131, 137, and 205-215, and are summarized as follows:

- 131      Modify Northern District weekly commercial fishing periods
- 137      Increase waters closed to commercial fishing in Upper Cook Inlet
- 205      Increase waters closed to commercial fishing for salmon in the *Northern District King Salmon Management Plan*
- 206      Reduce the number of king salmon that may be commercially harvested in the Northern District of Upper Cook Inlet
- 207      Adopt additional restrictions in the *Northern District King Salmon Management Plan*
- 208      Restrict the commercial king salmon fishery in the Northern District

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<sup>9</sup> CFEC Report Number 19-7N, *CFEC Permit Holdings and Estimates of Gross Earnings in Cook Inlet Commercial Salmon Fisheries, 1975-2018*, at 37, (Nov. 2019), [https://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2019-2020/uci/CFEC\\_19-7N.pdf](https://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2019-2020/uci/CFEC_19-7N.pdf).

<sup>10</sup> CFEC implemented the transfer survey in 1980.

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- 209 Close the commercial king salmon fishery in the Northern District
- 210 Modify the *Northern District Salmon Management Plan* and *Northern District King Salmon Management Plan*
- 211 Repeal certain restrictive provisions of *Northern District Salmon Management Plan*
- 212 Adopt additional restrictions in the *Northern District Salmon Management Plan*
- 213 Adopt new ‘paired restrictive’ management measures for the Northern District commercial salmon set gillnet fishery
- 214 Adopt new ‘paired restrictive’ management measures for the commercial salmon set gillnet fishery within the *Northern District Salmon Management Plan*
- 215 Provide additional commercial fishing opportunity for salmon within the *Northern District Salmon Management Plan*

You have asked us to assess whether the Ethics Act prevents Mike Wood from participating in *any* of the proposals that the BOF will consider at its upcoming meeting, including the proposals that Mr. Wood has indicated that he planned on abstaining from considering. If a conflict exists, you have asked us to consider whether it is substantial. If a substantial conflict exists, you have asked us to determine whether the conflict could be cured.

**ANALYSIS**

Generally, conflicts of interest for public officers are governed under AS 39.52.120 and 39.52.150 by the Executive Branch Ethics Act (the Ethics Act).<sup>11</sup> The Ethics Act is intended to ensure that public officers will not base their official decisions and actions upon their own personal or financial interests.<sup>12</sup> A public officer may not use, or attempt to use, his official position for personal gain.<sup>13</sup> Nor may a public officer take or withhold official action in a matter in which the public officer has a personal or financial interest.<sup>14</sup> The act mandates that “public officers conduct the public’s business

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<sup>11</sup> *Wilson Hughes*, 1996 Alaska Op. Atty. Gen. (Inf.) 241 (Alaska A.G.), 1996 WL 1062216, at \*2.

<sup>12</sup> AS 39.52.010.

<sup>13</sup> AS 39.52.120(a).

<sup>14</sup> AS 39.52.120(b)(4).

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in a manner that preserves the integrity of the governmental process and avoids conflicts of interest.”<sup>15</sup>

But the Alaska Legislature also recognized that “in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government.”<sup>16</sup> Thus, the Act “distinguish[es] between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interest that are substantial and material.”<sup>17</sup>

Therefore, the Ethics Act speaks principally to actual substantial conflicts of interest, not the appearance of conflict alone.<sup>18</sup> It requires individual determinations regarding potential conflicts of interest on a case-by-case basis.<sup>19</sup> If a substantial potential conflict exists, steps must be taken to avoid the conflict.

To determine whether a conflict of interest is substantial and material, we consider both (1) the significance of the officer's personal or financial interest in the matter, and (2) how his or her official actions may affect that matter. Under AS 39.52.110(b)(1) there is no substantial impropriety where a public officer’s “personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs.” Subsection (b)(2) then provides that there is “no substantial impropriety” if the public officer’s “action or influence would have insignificant or conjectural effect on the matter.”

The Ethics Act mandates disclosure when a Board member may potentially violate the Act, if he or she participates in the actions of the Board.<sup>20</sup> Violations of the Act may occur when a public officer takes official action that may affect the officer’s own personal or financial interests or those of an immediate family member or provides an unwarranted benefit to another.<sup>21</sup> The definition of “official action” means more than “vote.” Under the 2007 amendments to the Ethics Act, the new definition reads:

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<sup>15</sup> AS 39.52.010(a)(4).

<sup>16</sup> AS 39.52.110(a)(1).

<sup>17</sup> AS 39.52.110(a)(3).

<sup>18</sup> 9 AAC 52.010; 1993 *Inf. Op. Att’y Gen.* (Jan. I; 663-93-0113), 1993 WL 595769 (Alaska A.G.) at \*5.

<sup>19</sup> 1999 *Inf Op. Att’y Gen.* (Sept. 23; 663-99-0232), 1999 WL 1454824 (Alaska A.G.).

<sup>20</sup> AS 39.52.220(a).

<sup>21</sup> AS 39.52.120.

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“[A]dvice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction.”<sup>22</sup>

The Ethics Act also sets out a specific process for Boards and Commissions to follow when considering whether a member has a significant or material conflict. As described in more detail below, the procedural requirements for disclosures are found in AS 39.52.220 and 9 AAC 52.120. Under the statute, Board members must declare potential conflicts of interest and other matters that may violate the Ethics Act on the public record and in writing. This requirement provides to the members the opportunity to seek review of conflicts in advance of acting and it also provides other Board members input into whether that member’s interest is substantial or material.

**I. Mr. Wood has a personal interest in the possession of his SO4H permit and a financial interest in its use.**

The Ethics Act defines a “personal interest” as “an interest held or involvement by a public officer, or the officer’s immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit.” And it defines “benefit” as “anything that is to a person’s advantage or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value.”

The Ethics Act defines a “financial interest” as “an interest held by a public officer or an immediate family member, ... that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit.”<sup>23</sup>

Here, Mr. Wood’s SO4H permit can be sold. He possesses an interest in the permit, and he receives a benefit from the permit based on its value. He also possesses a financial interest in his fishing business because it is a source of income. Alaska Statute 39.52.120(b)(4) prevents public officials, like Mr. Wood, from “tak[ing] or withhold[ing] official action in order to affect a matter in which the public officer has a personal or financial interest.” Thus, Mr. Wood has a conflict of interest in those proposals before the board that significantly affect the value of his permit and the income it generates for him.

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<sup>22</sup> AS 39.52.960(14)(2007).

<sup>23</sup> AS 39.52.960(9).

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### II. Evaluating Mr. Wood's interests

Since Mr. Wood has an interest in matters related to his business and the fisheries he uses, official action related to that interest creates a potential conflict of interest. The Act requires that he refrain from any action that may affect his interest, unless there is a determination that there would be no substantial impropriety if he participated in the matter. To determine whether the Ethics Act affects his ability to take official action on specific proposals, you must consider the Act's specific prohibitions in light of the general principles discussed above.

To find that there is no substantial impropriety with his participation in a conflicted matter, the Board must assess (1) the significance of the officer's personal or financial interest in the matter, and (2) how his or her official actions may affect that matter.

Mr. Wood's disclosure states that regulations impacting west-side set-netters of the Northern District have a direct impact on his business. He also states that proposals 205-215, 131, and 137 affect his fishing area directly. Considering Mr. Wood's own disclosures, we recommend that Mr. Wood abstain from participating in those numbered proposals as he admits that the impact of these proposals would have a direct and non-conjectural impact on his business.

Beyond the proposals mentioned in the preceding paragraph, the Board must decide whether Mr. Wood's financial interest creates a substantial conflict such that he cannot participate in consideration of any of the other proposals the Board will consider. The answer to that question depends on whether the Board (other than Mike Wood) concludes that the proposal will have an insignificant or conjectural impact on his financial interest.<sup>24</sup> If the Board determines that the proposal would only have an insignificant or conjectural impact on Mr. Wood's financial interest, then it may determine that his participation is permitted under the Ethics Act. Alternatively, if the Board determines that the proposal would have a significant impact on Mr. Wood's interest that is definite and predictable, then it should preclude Mr. Wood from participating in those proposals.

The process for carrying out this determination is described below.

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<sup>24</sup> Given Mr. Wood's representation that he intended to abstain from certain proposals because of the direct impact the proposal would have on his business, we assume that his financial interest in his business is significant for him.

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### III. The Board Determination Process

#### A. Disclosure on the Public Record

Each Board member must identify actual and potential conflicts orally at the Board's public meetings in advance of participating in deliberations or taking any official action on a matter. A Board member may always choose to refrain from voting, deliberations or other participation regarding a matter, if the member believes he or she has a conflict.<sup>25</sup> If a member is uncertain whether participation or action on a matter would result in a violation of the Ethics Act, the member should disclose the circumstances on the public record and seek a determination from the chair of the board. When the chair discloses a conflict, participation is addressed by the entire board.

#### B. Determination by the Chair or Board

The chair of the Board, as designated ethics supervisor, or the Board itself must make a determination regarding the propriety of the disclosing member's participation on the record. Alaska Statute 39.52.220 prescribes the following procedure for addressing conflicts disclosed on the public record:

- The chair states a determination whether the member may participate based on the disclosure.
- Any other member may then object to the chair's determination.
- If an objection is made, the members present, excluding the member who made the disclosure, vote on the matter. The chair, so long as he or she is not the disclosing member with a potential vote, may also vote at this stage.
- Exception: A chair's determination that is made consistent with advice provided by the Attorney General may not be overruled.
- If the chair, or the Board by majority vote, determines that a violation will exist if the disclosing member participates or takes other official action on a matter, the member must refrain from voting, deliberating or participating in the matter.

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<sup>25</sup> In most, but not all, situations, refraining from participation ensures that a violation of the Ethics Act does not occur. Abstention does not cure a conflict with respect to a significant direct personal or financial interest in a state grant, contract, lease, or loan because the Ethics Act prohibition applies whether or not the public officer actually takes official action. These conflicts should be addressed with the appropriate designated ethics supervisor in advance, if possible.



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When the Board chair identifies a potential conflict, the members present, except for the chair, vote on the matter. If a majority determines that a violation of the Ethics Act will occur if the chair continues to participate, the chair shall refrain from voting, deliberating or participating in the matter.

Following the correct procedures is important. A Board member who takes action in accordance with a determination of the chair or vote of the Board is not liable if the action is later found to violate the Ethics Act. There must be full disclosure of the facts reasonably necessary to the determination and the attorney general must not have previously advised that the action violates the Act.<sup>26</sup>

### C. Disclosure in Writing

In addition to an oral disclosure on the public record at a board meeting, the Ethics Act requires that a disclosure also be in writing.<sup>27</sup> However, if the meeting is recorded, and a tape or transcript of the meeting is preserved and there is a method for identifying the declaration in the record, an oral disclosure may serve as the written disclosure.<sup>28</sup> Alternatively, the Board member may note the conflict on a Notice of Potential Violation disclosure form and the chair must record the determination.<sup>29</sup>

A member may also disclose the existence of a conflict of interest in writing prior to a meeting based on a meeting agenda permitting the chair to make a determination in advance of the meeting. The member may use either a Notification of Potential Violation or Request for Ethics Determination form. In such a situation, the member would still need to state the conflict and the chair note the determination on the public record of the meeting where the matter is being addressed.

### D. Disclosure to the Attorney General

The Ethics Act also requires that potential conflicts be reported to the attorney general.<sup>30</sup> This is accomplished when the chair reports all disclosures and determinations in the Board's quarterly ethics report to the attorney general, attaching the notice of potential violation and determination forms, if used.

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<sup>26</sup> 9 AAC 52.120(b).

<sup>27</sup> AS 39.52.220.

<sup>28</sup> 9 AAC 52.120(a).

<sup>29</sup> The Notice of Potential Violation form and a sample determination form are found along with other forms on the ethics web page at the Department of Law website (<http://www.law.state.ak.us/doclibrary/ethics.html>).

<sup>30</sup> AS 39.52.220(a).

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**IV. Conclusion**

If you have any question regarding this advice, please do not hesitate to call or email. Remember that this advice is based on the information disclosed to us in the request. “A public officer is not liable under this chapter for any action carried out in accordance with a determination made under AS 39.52.210 - 39.52.240 if the officer fully disclosed all relevant facts reasonably necessary to the determination.”<sup>31</sup> “The attorney general may reconsider, revoke, or modify an advisory opinion at any time, including upon a showing that material facts were omitted or misstated in the request for the opinion.”<sup>32</sup>

This document is confidential, and that confidentiality belongs to Mike Wood.

Sincerely,

TREG TAYLOR  
ATTORNEY GENERAL

By: /s/ Matthew P. Stinson  
Matthew P. Stinson  
Assistant Attorney General

MPS/ajh

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<sup>31</sup> AS 39.52.420(d).

<sup>32</sup> AS 39.52.420(e).