

To: Office of the Attorney General

From: John Wood, Chairman of the Alaska Board Of Fisheries

Re: Request for Advisory Opinion and/or Guidance

Date: January 4, 2024

The undersigned is currently the Chair of the Alaska Board Of Fisheries which apparently makes him the “designated supervisor” for said Board for purposes related to AS 39.52 and 9 AAC 52. It is established that Mike Wood, a member of the Board, holds a Cook Inlet Set Net permit from the State of Alaska. He has conferred with the undersigned as well as others in an attempt to assure full compliance with the above referenced statutes and regulations. It is my experience that the Chair does not make any ethics determination until the meeting itself has been called into order and the members present their disclosure statements on the record. However, I am attempting to be fully prepared to make the initial ruling in a timely manner and am seeking your advice whether this should be processed through an Advisory Opinion as per AS 39.52.240 or for “guidance” through AS 39.52.210 (c)?

I have requested that member Mike Wood present to me the disclosure statement that he is planning on presenting at the Upper Cook Inlet meeting to be held February 23rd through March 7th, a copy of which is attached hereto as Attachment #1. I am basing my conclusions upon said statement as well as decades of knowledge I have gained regarding the fisheries associated within the Matanuska Susitna Borough.

Mike and his wife Molly live a very rural lifestyle on the banks of the Susitna River approximately 5 miles upstream of Talkeetna and actively harvest their meals from the lands and rivers of the area. Both have been extremely immersed in protection of that lifestyle and have developed over the years a cadre of like minded advocates.

In addition to their homesite, they purchased a small parcel of land down at the mouth of the Susitna on the Cook Inlet. Later, they launched a small home cottage business operating a “Catcher/Seller” and “Direct Marketer” setnet operation which required them to purchase a permit from the State as well as lease a setnet site from DNR. This business is operated entirely on filling orders from their small base of supporters that are geared toward supporting the fish of the Susitna rather than filling any financial profit objective. It is a “cottage” business in the most limited sense of the word. Once that small number on the order list is filled, they cease fishing for the season which means that they are not practically impacted by fluctuations of the number of fish returning or by any reasonable regulation dictating escapement levels since their quantity is so small. Their business does not involve catching high volumes of fish to bring to a processor such as those commercial profit motivated businesses as they market exclusively to their small list and this business model does not lend itself to expanding beyond its current capacity.

The value of this mom/pop operation seems to be centered primarily on: (1) the value of the permit which they purchased in 2017 for \$15,000 and which has neither significantly increased nor decreased to this date; and (2) the annual earnings which are below \$5,000; and (3) gear such as nets etc which have minimal resale value.

Attachment #2 is the graph published by the Alaska Commercial Fisheries Entry Commission which depicts the time-weighted value of SO4H Cook Inlet Set Gillnet permits. It clearly shows that the value of those permits have not been impacted by any regulatory change during this entire 21st century even though the Board Of Fisheries changed many regulations through its 7 cycle meetings during that 23 year period. There is nothing within this current cycle that suggests any different outcome. Couple this history with the known fact that the eastside and westside (where Mike Wood's site is located) are de facto regulated independent of each other as evidenced by the numerous Management Plans that don't overlap. For example, the "roadmap" for this upcoming UCI meeting (Attachment 3) reflects that continued separation and it's approach is entirely consistent throughout my history with the Board. My conclusion is that short of a radical proposal such as totally closing all setnet fishing in the Inlet, nothing that this Board will consider during this upcoming UCI meeting will significantly impact the value of that permit.

It is not accurate to compare the mechanisms driving other permits such as Bristol Bay to those which are driving the permit in question. If anything, these SO4H permits are a bit unique in that the percentage of permits NOT FISHED has consistently been very high ranging from a low of 27.9% to a high of 39.3% which would definitely have a dampening effect on the permit value. It seems that the participation in the fishery would be more driven by the prices being paid by the substantially lower number of processors servicing that market as well as international practices such as currently being experienced by Russian dumping and flooding the market. I attempted to analyze the CFEC data to see if any discernible pattern driving permit value was present but nothing consistent jumped out (Attachment 4). Interestingly enough, their \$15,000 spent on the permit pales in comparison with the expensive airplanes, riverboats, side-by-sides etc that sports and personal use fishers regularly utilize in their respective fisheries

Regarding the net annual earnings of less than \$5,000, it is very improbable that any regulatory change would produce any significant change to that, particularly since this operation is specifically designed to have minimal impact on harvesting by ceasing all operations after they have filled their customer's orders. They don't rely upon high volume harvesting. Even though not entirely on point, AS 39.52.110 has specifically established a legal presumption that less than \$5,000 ownership interest is insignificant. I can envision no circumstance in this upcoming UCI meeting where Mike & Molly's annual earning would be significantly impacted by a regulatory change.

I am approaching my decisions with the first order of business adhering to the "Scope" of the Code of Ethics (AS 39.522.110 (a) (1)) which recognizes that "representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government". Further I have repeatedly heard that an "appearance of conflict", as opposed to an actual literal conflict, should prohibit a member from participating. I reject this position and point to 9 AAC 52. 110 which is crystal clear that "An appearance of impropriety does not establish that an ethical violation exists."

In my discussions with Mike Wood, he is inclined to abstain from participation in Proposals 205-215 as well as Proposals 131 & 137. I would honor such a request but am requesting that you issue as part of your advisory opinion whether an actual conflict exists with each of those proposals. I am also asking that you examine the remaining Proposals and Action Plans and advise Mike and I as to whether

there exist a significant conflict in your opinion and your reasoning supporting such a conclusion. If you opine that a conflict exists, what steps should Mike take to eliminate that conflict?

Addressing whether Mike's ownership of a CI Set Net Permit, in and of itself, creates an automatic conflict for anything beyond the westside, there is apparently precedence in past Board determinations as it applied to former member Fritz Johnson who even though he held an area permit out in Bristol Bay, was not conflicted out for those areas within the permit range that he never fished. He was not allowed to participate where his fishing was located with that overall permit area but was allowed to participate otherwise.

In concluding, the regulations point out that a member may rely upon past AG opinions and yet since they are confidential, they are not readily available. Please provide Mike and I with any pertinent opinions that should be considered relevant.

Unless advised otherwise, my intention if faced with a member who is determined to be conflicted out, is to prohibit that member from: (1) participating in any manner during the deliberative stage of the meeting on the proposal(s); AND (2) participating as a Board Member during the Committee Of The Whole session when those proposal(s) are presented for public participation. I will have the conflicted member step down from the table and assume a location outside of the partitioned area reserved for the Board. I will also instruct them to not address any of the Staff Reports that deal specifically with the conflicted proposal(s). Have I overlooked any other action that I should be taking. My position is that a record is being built throughout the entire process and therefore a clear line of demarcation needs to be established. I recognize that a conflicted member may still fully participate as a member of the public subject to the same limitations and opportunities that any member of the public may be entitled to, even to the extent of testifying before the Board as a member of the public.

If helpful, I can be reached at John.Wood@Alaska.Gov and my cell is [REDACTED]

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