



UNITED FISHERMEN OF ALASKA

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March 25, 2016

Honorable Bill Walker, Governor
Lieutenant Governor Byron Mallott
PO Box 110001
Juneau, AK 99811-0001

RE: Alaska Board of Fisheries

Dear Governor Walker and Lieutenant Governor Mallott,

Thank you for the opportunity for the UFA full board to meet with both of you on February 17, and the generous time provided by the Lt. Governor after the meeting and at UFA's board meeting the following day. We briefly discussed UFA's concerns with conflict of interest practice in the Board of Fisheries, other Board of Fish issues, and committed to documenting our range of concerns for your consideration.

UFA supports your initiative to form an ad-hoc advisory panel to look into the Board of Fisheries process. UFA can provide one or more UFA representatives to serve on the ad-hoc advisory panel as well as providing additional input on findings and recommendations of the panel as appropriate through all of our affiliated organizations.

Appointment of Board Members

At our recent meeting, we discussed that UFA had less opportunity to weigh in on board candidates than in previous years and we were surprised they were announced so early. You asked us why that was and we didn't answer at the time because we needed to double check our information. You appointed the Board members under [AS 39.05.080](#) Procedure for all Appointments instead of [AS 16.05.221 d](#) which requires Board of Fisheries members to be appointed by April 1st. This allows us to discuss potential candidates at our spring meeting. Governor's have been appointing a little bit earlier than the April 1 date since the change from a 120 day to a 90 day session, but usually about the same time or later than the North Pacific Fishery Management Council members. The April 1st date for Board of Fisheries was implemented to allow the current members to work through all the meetings for the winter before it is known if a current sitting member is reappointed or not and before session ends so they are confirmed by the legislature before they starting making decisions the following cycle.

Conflict of Interest

We discussed UFA's longstanding frustration with the board of fisheries conflict of interest policy, and its restrictive effect of denying the Board valid and useful information to use in its process. UFA and fishing groups feel strongly that knowledge and experience in a variety of fisheries and longtime multigenerational family involvement should be valuable assets for Board of Fisheries

members to bring to the table. In practice, these qualities most often prevent the member from participating in the board process in any way on many proposals, including deliberation where this information could be most informative to the board process. It also prevents many commercial fishermen from being willing to consider putting their name forward for the Board of Fish. In the Alaska legislature, members declare a potential conflict of interest and then are compelled to participate if there is an objection by any member to their non-participation. Further, legislative conflict of interest is limited to family in the immediate household, sharing living expenses.

In the Board of Fisheries, members are not allowed to participate if deemed to have a conflict of interest, and are even required to remove themselves from the seat at the board table; in fact the board process is stopped until the board member is in the public section of the room. Conflict of interest is considered as an economic or financial conflict on the basis of commercial permit ownership in the extended family, while prejudicial viewpoints of deep seated personal agendas are allowed openly in the Board process among non commercial fishing representatives.

Board of Fisheries conflict of interest reaches further into a member's family, including brothers, parents, children, aunts, uncles, grandparent, and spouse's parent and siblings, regardless of any financial linkage or dependency on the board member¹. The far reaching extension to family members outside of any real financial conflict of interest is unreasonable and unnecessary, and has been unfairly used to effectively reduce the Board from the intended seven members to six, or less, resulting in imbalance and board actions discriminatory against commercial fisheries. It also often creates an even number allowing for a split vote instead of a majority vote from an odd number of Board members.

The current process allows the Chair to have first ruling in a conflict of interest determination, which then can only be overruled by at least four of the remaining five members not including the Chair and the individual under question. Effectively this means that a minority of three members can rule a conflict of interest, thereby affecting the voting and outcome of proposals before the Board.

UFA supported HB 41 in the 2009 legislature which would have allowed participation but not voting and would have used the same definition of family as used in the legislature. We ask your help in pursuing similar legislation and/or any incremental progress that might be feasible through regulation or direction. UFA believes that the Governor can make an immediate incremental progress on the Board of Fisheries Conflict of Interest situation. (See further information provided as an addendum to the letter.) UFA considers the Board of Fisheries conflict of Interest our number one priority for trying to resolve.

Proposal Process

We appreciate that the Board has begun to evaluate potential regulatory and administrative process changes that might lead to cost savings, based on an ADF&G request. We are considering the draft proposal review process submitted as RC 52 in the recent Statewide Finfish meeting, and eagerly await the opportunity to view the modified proposal from Board staff. We will not have comments until we see the revised proposal, but some UFA board members have expressed

¹ Background Information on the Alaska Board of Fisheries Conflict of Interest Disclosures, February 5, 2009, Document submitted for HB 41 in 2009 Legislature:

http://www.legis.state.ak.us/basis/get_documents.asp?session=26&docid=5022)

concern that the policy may be shortchanging the public process that is the greatest strength of the State of Alaska management system. We expect to provide comments in the timeframe allowed before the Board adopts the policy, expected at its next teleconference meeting but before the April deadline for proposal submissions. The Governor's ad-hoc committee should also have the opportunity to vet these changes in the context of the overall board process.

Board Generated Proposals

In recent years, UFA became alarmed at the Board's propensity for adopting its own Board Generated Proposals, in cases where an outcome desired by one or more members was not included in the range of proposals submitted by the public and the department. The board would mix and match concepts from proposals and also invent their own solutions, prepare as a "board generated proposal" and pass in a single meeting. This practice prevented meaningful opportunity for public comment on the board generated proposals. Due to concerns raised by UFA and other stakeholders, the board circulated a draft policy for development of Board Generated Proposals in early 2013. UFA commented on the draft policy at that time. The Joint Boards of Fisheries and Game adopted policy 2013-34-JB, including our suggestion to remove "allocation concerns" among the specific examples of considerations of the "public's best interest". The Joint Boards did not adopt our second suggestion that a board-generated proposal not be generated as a substitute for an ACR proposal that was denied, or no action taken, or a late proposal identified by Dept of Law during a work session. We suggest that Board Generated Proposals not be adopted in the same meeting, but should be acted on at a subsequent meeting with adequate public notice.

Board Cycle

While UFA has no formal position to change from the Board's traditional three year cycle for taking up various regions and fisheries, many of our member groups do, and feel that a change to a four or five year cycle would benefit the business stability of their fisheries, be more consistent with the life cycle of many species such as salmon, and could be expected to reduce costs both for the board and for public participants that need to stay throughout the duration of the meetings. On the other hand, the current three year cycle gives stakeholders more opportunity to participate in regulatory change and the ability to address issues and concerns in a more timely basis. It should also be considered that an extended cycle may create an increase of requests for proposals to be taken up out of cycle, which concerns some groups. If the current cycle changes to a four or five-year cycle, we feel that Board members' terms should also be extended to match the length of the board cycle. Understanding all the fisheries is a great burden for Board of Fisheries members, especially new ones. Longer-terms would help the Board maintain members with history and aid new Board members by allowing them more time to become familiar with the State's fisheries. We suggest that this be included in concepts the ad-hoc committee would look into.

Board Makeup

The ad-hoc committee should look into the size of the board, and the perception of regional or constituency representation. The fact that the board is only seven members is a conflict with expectations among many constituents for a sport, commercial, or subsistence representative from their own region. To satisfy these expectations would require a larger board. The committee should consider concepts such as regional boards, designated seats, and increased number of seats.

Role of Local ADF&G Advisory Councils (ACs)

There are a large number of local community and Regional Fish and Game Advisory Councils, with associated costs within ADF&G for staff support, meeting space, etc. While UFA does not

have a formal position, we are aware from member groups that there is a wide range of the workability and effectiveness of these throughout the State. We are also unclear on the policy of the Board for use of input from ACs in the Board process. We suggest the ad-hoc committee look into ACs and if appropriate, suggest guidance for the Board in use of AC input.

We look forward to working with the administration in improving the Board of Fisheries process while considering the State of Alaska budget constraints. We affirm our support and willingness to serve on a Board of Fisheries ad-hoc advisory committee.

Sincerely,



Jerry McCune
President



Mark Vinsel
Executive Administrator

ADDENDUM

ADDITIONAL INFORMATION ON CONFLICT OF INTEREST

We provided a general overview of the Conflict of Interest in our letter. In this section we would like to specifically speak to how we think the Governor can make a small incremental change that would help the situation significantly.

To underscore how significant this situation can be, in the 2008/2009 Southeast Finfish cycle, one board member was conflicted out of 79 of the 157 proposals (50%), earlier in that year when Southeast Shellfish was considered he was conflicted out of 9 of 66 proposals (14%).

The Board of Fisheries members are held to the Alaska Executive Branch of Ethics Act ([AS 39.52](#)) in regards to the conflict of interest. We would like to point out a couple of specific sections that helps frame our following discussion understanding that we are not overlooking the broad intent of the Act. The Declarations of the Act state (6) that, *“no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can in prescribe behaviors that are appropriate to every situation: in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption or eliminate bad judgement;”* and section 39.52.110 Scope of Code (a)(1) acknowledges, *“in a representative democracy, the representative are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government”* and (b) (1) *“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 to;”* and 39.52.110 (d) *“Stock or other ownership interest in a business is presumed insignificant if the value of the stock or other ownership interest, . . ., is less than \$5,000.”*

The Board of Fisheries members are vetted and appointed by the Governor and then confirmed by the legislature. This vetting should provide board members with a moral and ethical standard to serve the State of Alaska and upholding the State Constitution for maintaining sustainable fishery resources. Even though the commercial fishermen appointed hold limited entry permits that are over a \$5,000 value, they are holding a permit that is held by a large class of persons (b)(1) similarly situated. That said we would like the Governor to consider the following changes.

Using the [Background Information on the Alaska Board of Fisheries Conflict of Interest Disclosures and Ethics Act Compliance in Regard to HB 41 prepared for House Resources Committee Feb 12, 2010](#), we suggest maintaining the current process described on page 2 *Procedures on ethics disclosures* except that if a board member is found to have a conflict, he/she stays at the table and they participate in committee discussions, deliberations but **do not vote** on the particular proposal in which a conflict is found to exist. Board members are smart enough to know when a board member is conflicted out on voting for a proposal to consider the member's bias when they are participating in the deliberations while being able to benefit from the knowledge the member has about the fishery, gear type or providing a better explanation of what the proposal effects would be. An ethical board member would provide all sides of the benefits and drawbacks to a proposal when providing these explanations. We intentionally try to have a representative number of commercial fishermen on the board to be able to provide these explanations to other board members but under our current situation, these explanations don't occur on the record in front of the public because you prevent the fisherman from participating and instead the conversations occur in background. This undermines the board process.

It is our opinion that the Board of Fisheries has gone too far to the letter of the law of the Executive Branch Ethics Act and have forgotten that the State wants industry members to participate. If you look at the majority of Boards and Commissions in the state that are tied to types of licenses, they are exempted from the Executive Branch Ethics Act so that the members involved in the industry are able to fully participate (i.e barbers, teachers, medical professions, professional Guide Board, Marine Pilots etc.). **By allowing participation but not voting on a proposal, you have reached a compromise that we believe is within the intent of the law and would be permissible.**