



Alaska Department of Fish and Game

Board of Fisheries

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## ALASKA BOARD OF FISHERIES

### POLICY ON BOARD MEMBER ACTIONS AT MEETINGS WHEN RECUSED FROM PARTICIPATING ON PROPOSALS

2020-2##-FB

The procedural requirements for ethics disclosures by board members are set out in AS 39.52.120(c), AS 39.52.220, and 9 AAC 52.120. The Alaska Executive Branch Ethics Act (Act) requires board members to disclose:

- Any matter that is a potential conflict of interest with actions that the member may take when serving on the board.
- Any circumstance that may result in violation of the Ethics Act.
- Any personal or financial interest (or that of an immediate family member) in a state grant, contract, lease or loan that is awarded or administered by the member's board.
- The receipt of certain gifts.
- Any personal or financial interests in a business or organization relating to fish or game resources.

**Prior to a Board Meeting:** Members are encouraged to seek review of matters in advance of taking action to ensure that actions taken will be consistent with the Act. Consistent with statutes, the chair serves as designated ethics supervisor for board members. The Department of Law Office of the Attorney General provides legal guidance to board members. If a member believes he/she may have a potential ethics conflict, they are encouraged to contact the chair and the office of the Attorney General prior to a board meeting to review specific issues.

**Disclosure Procedures at a Board Meeting:** The disclosure procedures for board members for declaring actual and/or potential conflicts, are:

- Members must declare actual and potential conflicts and other matters that may violate the Act, in advance of participating in deliberations or taking any official action on the matter.
- A member must always declare a conflict or a potential conflict and may choose to refrain from voting, deliberations or other participation regarding a matter.
- In most, but not all, situations, refraining from participation ensures that a violation of the 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 in some situations, the Act prohibition applies whether or not the public officer actually takes official action.

At each meeting, when a potential or actual conflict is declared by a member for the public record, the following procedure must be followed:

- The chair states his or her determination regarding whether the member may participate.
- Any member then may 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.
- Exception: Consistent with 5 AAC 52.120(b), a chair's determination that is made consistent with advice provided by the Attorney General may not be overruled.
- If, after following the process described above, the chair, or the members by majority vote, determine that a violation will exist if the disclosing member continues to participate, the member must refrain from voting, deliberating or participating in the matter.

**Board Member Actions Following an Ethics Recusal Determination:** This policy recognizes that board meetings are dynamic events that include layers of board, agency staff, and public interaction and involvement. Ethics determinations are made at the beginning of each meeting. After the initial ethics determinations are made, the board will then hear staff reports, public testimony, committees on proposals, and deliberations. On occasion after the initial ethics determinations are made, information may become available that indicates additional ethics conflict exist. When that occurs, the board will handle those matters consistent with the previous procedures.

In accordance with AS 39.52.960(14), a board member recused from taking official action on a proposal or proposals may not advise, participate, or assist, including, for example, provide a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction. Recusals for a board member may range from a single proposal to multiple proposals. These recusals may be based on a specific gear type, species, location, and any other number of factors. Information related to the subject of the recusal may occur at a variety of junctures throughout the board meeting.

Proposals at a board meeting are set according to the agenda and roadmap. Depending on the stage of the meeting, it is impractical for a recused board member to remove themselves from certain activities. The following informs recused board members of their participatory guidelines throughout a meeting.

Staff reports: Unless a board member is recused entirely from a suite of proposals dealing specifically with the subject matter of a staff report, that board member may remain at the board table throughout the report. The board member is reminded to avoid any line of questioning that may be linked directly or indirectly to the subject matter(s) of the proposals he/she is recused from participating. However, should the board member broach a line of questioning that appears to the chair or representative from the office of the Attorney General to be related to the subject(s) of the recusal, either individual may interject to prevent a violation of the Ethics Act.

Public testimony: It is impossible for a board member to know precisely what subjects an individual may choose to testify about, therefore it is impractical to expect board member to remove themselves from the board table during public testimony. Similar to actions during staff reports, board members are reminded to avoid any line of questioning that may be linked directly or indirectly to the subject matter(s) related to the proposal(s) they have been recused from participating. Further, the chair or representative from the office of the Attorney General reserve the right to interject in any line of questioning considered closely linked to the subject(s) of the recusal to prevent a violation of the Ethics Act.

Committee of the Whole: If a board member is recused from participating in a proposal, the board member is to remove themselves from the table when the proposal is discussed during a committee.

Deliberations: When the board is in deliberations, board members recused from participating in a proposal must physically remove themselves from the board table and join the audience. There are no exceptions to this rule.

**Recused board member participation**: Board members who are recused from taking official action on a proposal(s) may participate as a general member of the public, including providing public testimony and discussing the proposal as a member of the public in the Committee of the Whole process.

**Penalties**: Board members are reminded that violations under AS 39.52 include civil penalties of up to \$5,000 for each infraction, up to twice the amount of benefit gained by an individual from official action taken in violation of AS 39.52, and potential criminal sanctions if warranted.

Date Adopted: **October ##, 2020**  
Anchorage, AK

VOTE: #-#

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**TBD**, Chairman