

RULES OF CONDUCT FOR MEMBERS OF FISHERY MANAGEMENT COUNCILS



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RULES OF CONDUCT FOR MEMBERS OF FISHERY MANAGEMENT COUNCILS

As a member of a Regional Fishery Management Council, you serve on behalf of the Government and are held to a high standard of conduct to ensure public confidence in the actions of the Council. The Fishery Management Councils were created by statute to provide a means for cooperation among the Federal Government, state governments, and members of the public with expertise in commercial and recreational fishing and conservation in the creation of fishing policy. Although all members are expected to honestly and conscientiously work toward the fishing policy that is best for the nation, your role on the Council may vary depending on whether you are a voting or non-voting member and whether you are a regular Federal employee, a state official, or a public member who was nominated by a governor and appointed by the Secretary of Commerce. In recognition of these varying types of service, the applicable conduct rules also vary.

Conduct rules cover financial conflicts of interest; misuse of Council resources, including information; bribes and similar payments; and, for some members, limits on representing others before the Federal Government, both during Council service and after termination of such service.

The specific rules that apply to each type of member—public member, Federal official and state government official—are summarized below.

If you have a question about conduct rules or their application to a specific situation, you should seek guidance from the Regional Attorney of the National Oceanic and Atmospheric Administration assigned to provide advice to your Council.

You may also seek advice from an attorney in the Ethics Law and Programs Division, Office of the Assistant General Counsel for Administration, U.S. Department of Commerce, at 202-482-5384 or ethicsdivision@doc.gov, or, if you are a Federal official, an ethics official from your agency, particularly regarding Government-wide conflict of interest rules (including rules on bribes, misuse of resources, lobbying the Government, and post-service activities).

If you are a state government official, you should seek advice from the state office that administers your state's ethics rules.

Prepared by the Ethics Law and Programs Division, Office of the Assistant General Counsel for Administration, United States Department of Commerce – January 7, 2011

RULES OF CONDUCT FOR PUBLIC MEMBERS

If you serve as a public member of a Regional Fishery Management Council, you are considered a Federal employee for purposes of criminal conflict of interest statutes applicable to other United States Government employees. However, because of the unique nature of the Councils, which are composed of members of the public who have special expertise in fishing matters and who, in many cases, are from the commercial or recreational fishing industries, special ethics rules apply. For regular Federal employees, disqualification is usually the preferred method for avoiding a conflict of interest; however, for Fishery Management Councils, in order to allow full participation by members of the public with knowledge of and experience in fishing matters, the method chosen by Congress to deal with conflicts of interest is full public disclosure of fishing interests and a system of appointment that encourages a diversity of views. Nevertheless, as noted below, disqualification is required with regard to matters that will have a particular effect or a disproportionate effect on your financial interests relative to those of others in the fishing industry.

DISCLOSING FINANCIAL INTERESTS

Public Financial Disclosure Report of Fishing Interests. You are required to report any interest in a “harvesting, processing, lobbying, advocacy, or marketing activity” on a Financial Interest Form–NOAA Form 88-195, “Statement of Financial Interests for Use by Voting Members and Nominees of Regional Fishery Management Councils.”

What to Report. You must list on this report any financial interest in a “harvesting, processing, lobbying, advocacy, or marketing activity” that is being or will be undertaken within any fishery over which the Council has jurisdiction. Such financial interests include those held by your spouse, minor child, partner, or any organization (other than the Council) in which you serve as an officer, director, trustee, partner, or employee. More specifically, you must report:

- stock, equity, and ownership interests in any
 - company or business engaged in a harvesting, processing, or marketing activity;
 - fishing vessel engaged in a harvesting, processing, or marketing activity; or
 - equipment company or company that provides other services to a harvesting, processing, or marketing activityin any fishery under the jurisdiction of your Council;
- employment with any
 - company or business engaged in a harvesting, processing, or marketing activity;
 - fishing vessel engaged in a harvesting, processing, or marketing activity;
 - equipment company or company that provides other services to a harvesting, processing, or marketing activity; or
 - firm providing consulting, legal, or representational services to an entity engaged in, or providing equipment or services essential to, a harvesting, processing, or marketing activity, including a firm engaging in lobbying or advocacy servicesin any fishery under the jurisdiction of your Council; and

- employment with, or service as an officer, director, or trustee of, any
 - association whose members include companies, vessels, or other entities engaged in harvesting, processing, lobbying, advocacy, or marketing activities in; or
 - company providing services to harvesting, processing, or marketing activities in
 - organization engaged in lobbying or advocacy with regard to any fishery under the jurisdiction of your Council.

Public Review of Financial Interest Forms.

You should file your completed financial interest form with the Executive Director of your Council. A copy will be sent by Council staff to the National Marine Fisheries Service (NMFS) Regional Administrator for your Council; the National Oceanic and Atmospheric Administration (NOAA) Regional Attorney who advises your Council; the NMFS Office of Sustainable Fisheries; and the Ethics Law and Programs Division, Office of the General Counsel, U.S. Department of Commerce.

Your form will be available for inspection by members of the public in the office of the NMFS Regional Administrator with jurisdiction over your Council, at Council offices, and at Council meetings and hearings. They will be retained for five years after termination of your last term in office.

The Importance of Filing a Complete and Timely Formt. The financial interest forms are an integral part of the system for exempting you from certain provisions of a criminal conflict of interest statute, as explained below. If you do not file a complete, accurate, and up-to-date form in a timely manner, you may be required to refrain from participating in Council actions. **If you participate in matters affecting a harvesting, processing, or marketing activity that was not properly disclosed, you may be subject to criminal penalties.**

FINANCIAL CONFLICTS OF INTERESTS

Basic Rule. Generally, you are barred from participating personally and substantially in any matter as a Council member that will have a direct and predictable effect on your financial interests, or on the financial interests of your spouse, minor children, or general partners; or on an organization in which you serve as an officer, director, trustee, general partner, or employee; or on a person or entity with which you have an arrangement regarding future employment or are negotiating for future employment.

Exemptions. The requirement that you not participate in a matter affecting your financial interests (or those of persons whose interests are attributed to you, as indicated above) does not apply if the interest is in the form of a company security publicly-traded on a United States exchange and:

- the value of your interests in all affected parties is \$15,000 or less; or

- the value of your interests in a non-party regarding a particular matter involving specific parties* that will affect the non-party is \$25,000 or less; or
- the value of your interests in each affected company is \$25,000 or less and your interests in all affected companies is \$50,000 or less and the matter at issue is a broad policy matter (rather than a matter involving specific parties); or
- the interest is held through a broadly-diversified mutual fund; or
- the interest is held through a mutual fund that focuses its investments in a specific industry sector or geographic sector and your interests in the fund (and in other sector-specific funds that focus investments in the same sector) is \$50,000 or less.

* see the sidebar on page 7 for an explanation of this term

Special Rules for Interests in Harvesting, Processing, Lobbying, Advocacy, and Marketing Activities. Public disclosure, rather than disqualification, is the statutory method for a public member of a Fishery Management Council to resolve a potential conflict with regard to most interests in a fishery harvesting, processing, lobbying, advocacy, or marketing activity. Disqualification is not required, except with regard to two specific situations, as identified in the third bullet below.

You may fully participate as a Council member in a matter affecting your financial interests provided that:

- the interest in question is in a *harvesting, processing, lobbying, advocacy, or marketing activity*;
- the interest has been reported on a Financial Interest Form (NOAA Form 88-195); and
- the matter at issue:
 - will not have an **expected and substantially disproportionate benefit*** to your financial interest (or the financial interest of your spouse, minor children, or general partners; or any organization in which you serve as an officer, director, trustee, general partner, or employee) relative to the financial interest of other participants in the same gear type or sector of the affected fishery; and
 - is not a matter **primarily of individual concern**.*

* as explained below

Note that the exemption from disqualification requirements regarding harvesting, processing, lobbying, advocacy, and marketing activities is directly tied to filing a Financial Interest Form. The exemption will apply *only* to a financial interest you disclose.

Disqualification from Voting on Matters that Would Create an “Expected and Substantially Disproportionate Benefit.” You cannot vote on a Council decision that would have a significant and predictable effect on a financial interest disclosed on your Financial Interest Form. This applies to any matter in which there is a close causal link between the decision and an expected and substantially disproportionate benefit to your financial interest.

Definition of “expected and substantially disproportionate benefit.” A Council action will have an “expected and substantially disproportionate benefit” to you if you (or those whose interests are attributed to you)* have:

- a greater than 10% interest in the total harvest of the fishery (or the sector of the fishery that is under consideration by the Council);
- a greater than 10% interest in the marketing or processing of the total harvest of the fishery (or sector of the fishery); or
- full or partial ownership of more than 10% of the vessels using the same gear type within the fishery (or sector of the fishery).

* *see the sidebar*

The percentage of interest will be determined with reference to the most recent fishing year for which information is available, except that for fisheries in which Individual Fishing Quotas (IFQs) are assigned, the percentage of IFQs assigned will be determinative.

If you believe that these provisions require your disqualification from a matter, you may announce your disqualification (or recusal) at any time before the vote on the matter. If you have any question regarding the application of the rules to your situation, you may seek advice from the NOAA Regional Attorney who advises your Council or an attorney in the Ethics Law and Programs Division of the U.S. Department of Commerce. If you would like a determination as to whether an interest requires your disqualification, you may seek such a determination from the NOAA Regional Attorney who advises your Council using the procedures set forth below.

Interests attributed to you are those of your spouse, minor children, general partners, non-Federal employers, and entities with which you are seeking employment and any organization in which you serve as an officer, director, or trustee.

Participation in Discussions and Deliberations. If you are disqualified from voting on a matter because the decision would have an expected and substantially disproportionate benefit on a harvesting, processing, or marketing interest which you have disclosed, you may, nevertheless, participate in Council and committee deliberations in the matter after notifying the Council that you will not be voting on the matter and after identifying the financial interest that would be affected.

Procedures for Determinations Regarding an “Expected and Substantially Disproportionate Benefit.” You may ask for a determination as to whether a matter will have an expected and substantially disproportionate benefit to you (or those whose interests are attributed to you)* from the NOAA Regional Attorney assigned to advise your Council (or such other attorney as designated by the National Oceanic and Atmospheric Administration). The NOAA Regional Attorney may also make such a determination on his or her own initiative. Neither you, nor another Council member, nor a member of the public may initiate a procedure regarding another Council member. However, you may provide written and signed information to the Regional Attorney indicating that initiation of such a procedure may be appropriate.

* *see the sidebar*

You should make a request for a determination:

- within a reasonable time before the Council meeting at which the matter at issue will be addressed, or
- during the Council meeting before the vote on the matter at issue.

You should make a request for a determination as far in advance of the Council meeting as possible in order to provide the NOAA Regional Attorney sufficient time to thoroughly examine and consider available information.

A Regional Attorney who receives reliable and probative written and signed information prior to a Council meeting relating to a disqualification determination will announce at the beginning of the meeting the receipt of such information, the nature of the information, and the identity of the person providing the information (or during a Council meeting if the issue could not reasonably have been anticipated prior to the meeting). This announcement will be made during the meeting if reliable and probative information is received after the beginning of the meeting.

If the Regional Attorney determines that you may not vote on a matter because it will have an expected and substantially disproportionate benefit to you (or anyone whose interests are attributed to you), you may not vote on the matter, but you may state for the record how you would have voted. You may also fully participate in deliberations and discussions regarding the matter (after notifying the Council of your disqualification and after identifying the financial interest that would be affected).

If you disagree with a determination by a Regional Attorney regarding yourself or any other Council member, you may file a written request with the NOAA General Counsel for review of the determination. Such a request must be received within ten days of the determination. A reversal of the determination will not affect any Council vote that has already been taken. However, the decision by the NOAA General Counsel may provide useful guidance regarding future Council actions.

Disqualification from Participating in Matters Primarily of Individual Concern. You cannot participate in any Council matter that is primarily of individual concern if you (or those whose interests are attributed to you) have a financial interest in the matter. This disqualification applies to participating in deliberations, rendering advice, and making recommendations, as well as voting on the matter.

Definition of "matters of primarily individual concern." "Matters primarily of individual concern" are those matters that affect a small number of identified, or easily identifiable, parties, rather than broad policy matters affecting many entities.

For example, a contract between your Council and a company would be a matter primarily of individual concern; thus, you would be disqualified from participating in any Council action regarding the contract if you had stock in the contractor or were employed by the contractor, even if the company was listed on a Financial Interest Form. A Fishery Management Plan would usually be considered a broad policy matter. However, if a fishery only had a few active vessels, a Fishery Management Plan regarding that fishery would be a matter primarily of individual concern and you would be required to disqualify yourself from participating in matters concerning the Plan if you owned one of the vessels.

This disqualification requirement is based on conduct regulations rather than a criminal conflict of interest statute.

BRIBES AND SIMILAR PAYMENTS

You cannot accept anything of monetary value in exchange for taking an action as a Council member or failing to take an action as a Council member, other than payments from the United States Government in connection with your Council service. This restriction is based on the Federal criminal statute against bribery.

In addition, Council rules specify that you cannot pay, offer, promise, solicit, or receive from any person, firm, or corporation a contribution of money or anything of value in consideration of support or the use of influence in obtaining for any person any appointive office, place, or employment under the Council.

CONTACTING THE FEDERAL GOVERNMENT ON BEHALF OF OTHERS

You cannot serve as an agent or attorney or, if paid, otherwise represent anyone before a Federal agency or Federal court, including a non-Federal employer or a client, concerning a “particular matter involving specific parties”* if you participated personally and substantially in the matter as a Council member. Representation for these purposes includes any communication with a Federal official with the intent of influencing Government action made on behalf of someone other than yourself. This restriction is based on Federal criminal conflict of interest statutes. You are also barred from receiving compensation for the representational activities of others regarding such matters (such as through a partnership distribution if some of the partnership’s proceeds were derived from representational activities before a Federal agency or Federal court relating to specific-party matters in which you participated as a Council member).

* *see the sidebar for an explanation of this term*

This restriction does not apply to communications to Congress or to state or local governments or to matters in which you did not participate as a Council member.

Furthermore, because the restriction on representing others and receiving payments for representations before the Government apply only to specific-party matters, voting on a Fishery Management Plan does not restrict you from later contacting a Federal agency on behalf of a client or employer regarding the Plan (unless the specific Plan at issue affects only a few easily-identifiable parties).

Additional restrictions apply if you serve more than 60 days during any 365-day period; you should seek specific advice if you anticipate serving for more than 60 days in a 365-day period.

A “particular matter involving specific parties” is a matter in which there are named and identified parties. Examples of such matters are applications, contracts, grants, investigations, and law suits. Such matters do not include broad policy matters, such as fishery management plans, regulations, and legislation, in most cases. The term is similar, but not identical, to “matters of primarily individual concern.”

MISUSE OF COUNCIL RESOURCES, INFORMATION, AND INFLUENCE

Council resources, like all Government resources, may only be used for official Government activities. This applies to use of supplies, equipment, staff time, and services, including long-distance telephone and fax services. You also have an affirmative duty to protect and preserve Council property.

You also must be careful not to disclose or use any nonpublic information that you learn in the course of your service to the Council, until such time as the Council or the Department of Commerce has authorized release of the information.

Furthermore, you cannot use your position as a Council member or any authority you have as a Council member for personal purposes. You cannot refer to your Council position in furtherance of private activities or use your Council title on personal stationery or on business cards used for non-Council activities.

RULES THAT WILL APPLY AFTER LEAVING COUNCIL SERVICE

There are a few restrictions that will apply to you even after you terminate your service with a Fishery Management Council; these concern contacting the United States Government on behalf of others and using nonpublic information.

Restrictions on Contacting the Federal Government. After you leave Council service, you will be barred from communicating with any Federal agency or Federal court on behalf of someone else concerning a particular matter involving specific parties* with the intent to influence Government action if you participated personally and substantially in the matter as a Council member. Note that this is the same as the restriction described above that applies while you serve on the Council, although it is based on a different Federal criminal conflict of interest statute. You will also be barred for two years after leaving Council service from representing anyone before any Federal agency or Federal court concerning a particular matter involving specific parties* in which you did not personally participate, but which was under your "official responsibility," during your last year of your term of service, which would include any such matter pending before the Council during that period.

** see the sidebar on page 7 for an explanation of this term*

Disclosure and Use of Nonpublic Information. You will continue to be restricted after leaving Council service from disclosing or using nonpublic information you obtained through your Council service that is protected by statute, until its release has been authorized by the Council or the Department of Commerce.

GENERAL CONDUCT RULES

In addition to the above rules, Council conduct regulations provide that you cannot engage in criminal, infamous, dishonest, notoriously immoral, or disgraceful conduct.

For further guidance contact the NOAA Regional Attorney who advises your Council or the Ethics Law and Programs Division, Office of the Assistant General Counsel for Administration, U.S. Department of Commerce, at 202-482-5384.

RULES OF CONDUCT FOR FEDERAL OFFICIALS

If you serve on a Fishery Management Council as a regular Federal Government employee or officer, your service is considered part of your Government duties and you are subject to the same conflict of interest statutes and ethics regulations that apply regarding your performance of any other Government task.

More specifically, you are subject to the provisions of criminal conflict of interest statutes, which prohibit you from:

- accepting bribes (18 U.S.C. § 201);
- representing others before a Federal agency or Federal court or accepting compensation for the representational activities of others (18 U.S.C. §§ 203 and 205);
- representing others before a Federal agency or Federal court after you leave U.S. Government service regarding a particular matter involving specific parties on which you or your subordinate worked, or, if you are a senior employee, regarding any matter before your agency (including the Regional Fishery Management Council with which you serve) (18 U.S.C. § 207);
- participating in matters affecting your financial interests (or the interests of your spouse, minor children, or general partners; or of an entity for which you serve as an officer, director, trustee, or employee; or of a person or entity with which you have an arrangement regarding future employment or are negotiating for future employment), unless a regulatory exemption applies or you receive a conflict of interest waiver (18 U.S.C. § 208); and
- accepting compensation from a source other than the United States Government for performing your Federal duties, including your Council duties (18 U.S.C. § 209).

Please note that, as with public members of Councils, because of regulatory exemptions, you are not required to disqualify yourself from participating in a matter affecting your financial interests if the interest is a security in a company traded on a U.S. exchange and the value is \$15,000 or less in a party (or \$25,000 or less in a non-party that will be affected by a specific-party matter), or the issue is a broad policy matter and the interest is \$25,000 or less in any affected company and \$50,000 or less in all affected companies. However, the exception for public members that applies to interests in “harvesting, processing, and marketing activities” disclosed on a NOAA Form 88-195 Financial Interest Form does not apply to you.

You are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch or similar rules for members of the armed services.

If you are a civilian employee, under the Standards of Conduct, you cannot:

- accept gifts from persons who are regulated by the Council with which you serve or who have interests in Council actions, or accept gifts that are offered because of your Council position;
- participate in matters involving specific parties that would affect the financial interests of a member of your household;

- participate in matters involving specific parties if one of the parties is, or is represented by, a person with whom you have a close family or business relationship, including a person with whom you have or are seeking business relations; a close relative or household member; the employer (or prospective employer) of your spouse, parent, or dependent child; a recent former employer; or an organization in which you are an active participant;
- engage in non-Federal activities that would conflict with your Council duties; or
- use Government resources, including Council resources, for unauthorized purposes.

There are a number of exceptions to these basic restrictions. Furthermore, some departments and agencies, although not the Department of Commerce, have supplemental ethics regulations. You are subject to the supplemental ethics regulations issued by your agency. You should seek advice from an ethics official of your Federal agency if you have a question about any conduct rule or its application to a particular situation.

Furthermore, you are restricted from engaging in some political activities; you cannot: (1) engage in political activities while on duty, including periods you are engaging in Council activities; (2) use Government resources for political purposes, including Council resources; and (3) use the authority of your position to affect an election, including your authority as a member of a Council. There are some additional restrictions that apply regarding political activities, such as engaging in fund-raising and running for office. You should contact an ethics official in your agency for further advice regarding any additional restrictions.

Also, like other Council members, you cannot participate in matters primarily of individual concern and you cannot engage in criminal, infamous, dishonest, notoriously immoral, or disgraceful conduct.

For further advice, contact your agency ethics official; NOAA employees should contact the Ethics Law and Programs Division, Office of the Assistant General Counsel for Administration, U.S. Department of Commerce, at 202-482-5384.

RULES OF CONDUCT FOR STATE GOVERNMENT OFFICIALS

If you serve on a Fishery Management Council as an employee or officer of a state government, you are not subject to the Federal conflict of interest statutes or conduct regulations that apply to Federal Government officials. However, you are subject to any state statutes or regulations that apply to your conduct as a state official.

In addition, Fishery Management Council rules provide that you cannot:

- pay, offer, promise, solicit, or receive from any person, firm, or corporation a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support or influence in obtaining for any person any appointive office, place, or employment under the Council;
- use or allow the use, for other than official purposes, of information obtained through or in connection with your Council service that has not been made available to the general public;
- engage in criminal, infamous, dishonest, notoriously immoral, or disgraceful conduct;
- use Council property for other than official business;
- participate personally and substantially in a matter primarily of individual concern; or
- participate in any matter of general public concern that is likely to have a direct and predictable effect on your financial interests.

For further advice, contact the office in your state agency responsible for providing ethics advice or, for advice about Council conduct rules, the NOAA Regional Attorney responsible for advising your Council or the Ethics Law and Programs Division of the U.S. Department of Commerce, at 202-482-5384.