

RULES OF CONDUCT FOR STAFF AND ADVISORS OF FISHERY MANAGEMENT COUNCILS



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DEPARTMENT OF COMMERCE

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RULES OF CONDUCT FOR EMPLOYEES OF FISHERY MANAGEMENT COUNCILS

If you serve as an employee of a Regional Fishery Management Council, it is important that you maintain a high standard of conduct to ensure public confidence in the actions of the Council.

You are considered a Federal employee for purposes of criminal conflict of interest statutes applicable to other United States Government employees. You are also subject to ethics regulations issued by the National Oceanic and Atmospheric Administration for all Regional Fishery Management Council employees. These statutory and regulatory conduct rules are summarized below.

FINANCIAL CONFLICTS OF INTERESTS

Disqualification Requirement – Basic Rule. As a Council employee, you are subject to the same conflict of interest statutes that apply to Federal employees.

Under one of these statutes, you cannot participate on a matter as a Council employee that will affect your financial interests (unless an exception applies).

You also cannot participate in a matter that will affect the financial interests of your spouse, minor children, or general partners; or an organization in which you serve as an officer, director, trustee, general partner, or employee; or someone with whom you have an arrangement regarding future employment or are negotiating for employment (unless an exception applies).

Exceptions. You are not disqualified from working on matters affecting your interests (or those of the persons identified above) in publicly-traded securities (stocks and bonds) *if*:

- the value of your interests* in all companies that are specific parties to the matter before the Council is \$15,000 or less;
- the matter involves specific parties (such as a contract or law suit) and the value of your interests* in companies that are not parties but will be affected by the matter anyway is \$25,000 or less; or
- the value of your interests* in any one company affected by the matters before the Council is \$25,000 or less and in all companies likely to be affected companies is \$50,000 or less; or
- the interests are held through a broadly-diversified mutual fund (a fund that does not focus its investments in a particular industry sector, state, or foreign country); or
- the interests are held through mutual funds that focus their investments in a specific industry sector, state, or foreign country and the value of your interests in such funds is \$50,000 or less.

* or the interests of the others identified above

Definitions.

“Publicly-traded securities” are stocks and bonds traded on a United States exchange. Only such interest are covered by the exceptions. Interests in private-held companies are not covered by the exceptions, regardless of their value.

“Matters involving specific parties” are issues before the Council in which there are identified and named parties, such as contracts and law suits. Fishery management plans are not such matters. .

Note that disqualification requirements are different for you than they are for Council members. There is an exception to the disqualification requirement for Council members that applies to interests in harvesting, processing, lobbying, advocacy, and marketing activities that are reported on a Statement of Financial Interests (NOAA Form 88-195). This exception does not apply to you.

Restriction on Investments and Financial Interests. Under conduct regulations, you are barred from having a direct or indirect financial interest that interferes with the fair and impartial conduct of your Council duties. For purposes of this restriction, a financial interest includes an employment interest. An indirect interest includes a financial interest of your spouse or minor child. If a financial interest will impose a disqualification on you that will prevent you from performing your Council duties, you may be required to divest the interest or end the employment. This is most likely to be the case if you have financial interests in commercial or recreational fishing companies or vessels that participate in matters under the jurisdiction of your Council, although minimal stock holding (totaling less than \$15,000) may not present such a problem.

BRIBES AND SIMILAR PAYMENTS

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

You are also barred by statute from receiving a supplementation of your Council salary for performing your Council duties from a source other than your Council or the Federal Government.

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

Basic Rule for Regular Council Employees regarding Contacting the Federal Government on Behalf of Others. If you serve more than 130 days in a 365-day period as a Council employee, you cannot serve as an agent or attorney or, if paid, otherwise represent* anyone before a Federal agency or Federal court (unless allowed under an exception, as listed below). This means that in most cases you cannot contact a Federal agency official or a Federal court official through a personal meeting, a telephone call, electronic mail, or in writing, on behalf of someone else with the intent to influence Government action. You are also barred from receiving payments for such lobbying by others (such as if you are in a partnership and part of the partnership distribution is based on representational activities before a Federal agency or Federal court).

** see the sidebar on page 4 for the definition of representational activities*

Exceptions. You can contact a Federal agency or Federal court official on behalf of:

- your parent, spouse, or child, or an estate or trust you administer *but only if* you receive prior approval in advance from the official responsible for your appointment;
- a non-profit organization composed primarily of Federal employees (including Council employees) or their families, if you do not receive compensation for such service and if the matter does not involve a claim against the Government, a proceeding in which the organization is a party, or Government financial benefits to the organization; or
- a Council employee (or other Federal employee) in a personnel proceeding (if it is not inconsistent with your Council duties and if you do not receive compensation for such services).

If you need to contact the Government on behalf of a family member, you can get assistance in preparing the necessary approval request form the Ethics Law and Programs Division at ethicsdivision@doc.gov or 202-482-5384.

Rule Applicable to Council Employees Who Serve for a Limited Period of Time regarding Contacting the Federal Government on Behalf of Others. If you serve for 130 days or fewer during a 365-day period, you will be subject to more limited restrictions on representing* others before the Federal Government (and from receiving payment for the representational activities of others). The restriction will vary depending on the duration of your service.

** see the sidebar on page 4 for the definition of representational activities*

If you serve for 61-130 days per year, you are barred from representing others before a Federal agency or Federal court in any matter involving specific parties if:

- you participated personally and substantially in the matter as a Council employee; or
- the matter is pending before your Council.

If you serve for 60 days or less per year, you are barred from representing others before a Federal agency or Federal court in any matter involving specific parties if you participated personally and substantially in the matter as a Council employee.

You are also barred from receiving payments for such representational activities by others (such as if you are in a partnership and part of the partnership distribution is based on representational activities before a Federal agency or court).

MISUSE OF COUNCIL RESOURCES AND INFLUENCE

Council resources, like all Government resources, may only be used for official Government activities. This applies to the 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 with the Council, until such time as the Council or the Department of Commerce has authorized release of the information.

You also cannot use your position as a Council employee, or any authority you have as a Council employee, for personal purposes. You cannot refer to your Council position in the

course of conducting private activities and you cannot use your Council title on any personal correspondence or business cards used for non-Council activities, except that you may refer to your position as part of general biographical information.

RULES REGARDING POLITICAL ACTIVITIES AND AFFILIATION

You cannot use your official authority as a Council employee or any influence derived from your position with a Council for the purpose of interfering with, or affecting the result of, an election to, or a nomination for, any national, state, county, or municipal elective office.

You cannot be deprived of employment, position, work, compensation, or benefits provided for, or made possible by, the Magnuson Act (the Act that established the Councils) on account of any political activity or lack of such activity in support of, or in opposition to, any candidate or any political party in any national, state, county, or municipal election, or on account of your political affiliation.

RULES THAT WILL APPLY AFTER LEAVING COUNCIL SERVICE

There are a few restrictions that will apply to you after you end your service with a Fishery Management Council. These restrictions concern representing others before the Federal Government and disclosing nonpublic information.

Restriction on Contacting the Federal Government.

After you leave Council service, you cannot represent others before any Federal agency or Federal court concerning a particular matter involving specific parties* if you participated personally and substantially in the matter as a Council member. Note that this is similar to the anti-lobbying restriction that applies while you serve with the Council. You also cannot for two years after leaving Council service represent others before any Federal agency or Federal court regarding a specific-party matter* in which you did not personally participate but that was pending under your official responsibility during your service on the Council, such as if a subordinate of yours worked on the matter.

* see the sidebar on page 1 for the definition of "matters involving specific parties"

Definitions.

"Representing" someone before the Government includes any communication made on behalf of someone other than yourself to influence Government action. The form of the communication does not matter, it can be by email, a letter you sign, a personal meeting, or a telephone call.

Nonpublic Information. You will continue to be restricted after leaving Council service from disclosing or using nonpublic information you obtained through your Council service if the information 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 may not engage in criminal, infamous, dishonest, notoriously immoral, or disgraceful conduct.

CONTACT INFORMATION TO OBTAIN FURTHER GUIDANCE

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 of the U.S. Department of Commerce at 202-482-5384, particularly with respect to Government-wide conflict of interest rules on bribes, misuse of resources, representing others before the Government, and restrictions after leaving Council service.

RULES OF CONDUCT FOR ADVISORS, PANEL MEMBERS, AND OTHERS WHO WORK WITH A FISHERY MANAGEMENT COUNCIL

If you serve on a committee or panel of a Regional Fishery Management Council, or if you provide services under contract to a Fishery Management Council, you are not considered a Federal employee or a Council employee for purposes of the statutes and regulations on ethical conduct. However, to ensure public confidence in the Fishery Management Council system and Government actions regarding regulation and conservation of fishery resources, it is important that you maintain a high standard of conduct.

MISUSE OF GOVERNMENT RESOURCES

Council resources, like other Government resources, may only be used for official authorized Government activities. This includes use of:

- Council equipment (including computers and copying machines);
- Council supplies (including Council stationery);
- Council services; and
- the time of Council personnel.

If you are working in a Council office, you should be careful to preserve Council property. If you are entitled to reimbursement from the Council or the Department of Commerce for certain expenditures, such as travel costs, you must ensure that all charges you claim are legally authorized.

MISUSE OF COUNCIL INFORMATION

You cannot use information you obtain as part of your work with a Fishery Management Council for personal activities and you cannot disseminate the information to persons outside the Council, unless authorized by the Council or the Department of Commerce. Restricted information includes:

- nonpublic fisheries data and proprietary information;
- nonpublic economic or scientific analyses;
- private personnel information;
- source selection and other nonpublic procurement information; and
- other nonpublic information.

Improper use or release may result in criminal charges (such as for misuse of national security information) or civil liability (such as for misuse of business proprietary information).

MISUSE OF COUNCIL AFFILIATION

You cannot use your association with a Fishery Management Council, including business contacts obtained through your work with the Council, for personal benefits or favors for yourself or others, including friends, relatives, or business associates.

Because you are not a Council or Federal employee, you cannot represent that you serve or act on behalf of the Council or the Federal Government, unless authorized to do so. You cannot use your association with a Council to imply that the Council endorses your personal activities. Thus, you should not refer to a Fishery Management Council on your business card unless your relationship with the Council is made clear.

ADDITIONAL RULES

Additional rules may apply depending on the specific arrangement or agreement between you or your employer and a particular Council. For example, a clause in a contract under which you provide services to the Government may subject you to additional conduct restrictions.

CONTACT INFORMATION TO OBTAIN FURTHER GUIDANCE

If you have a question about conduct rules, 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.

Prepared by the Ethics Law and Programs Division, Office of the Assistant General Counsel for Administration, United States Department of Commerce – January 24, 2011