



Atlantic States Marine Fisheries Commission

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MEMORANDUM

August 6, 2014

To: Atlantic States Marine Fisheries Commission Commissioners and proxies
From: Robert Beal
RE: Policy on Financial Disclosure and Conflict of Interest Decision Document

The Commission's Policy on Financial Disclosure and Conflict of Interest has been discussed by the Commissioners on multiple occasions. The foundation of the policy is determining when a conflict of interest exists and whether it impacts the fair and impartial conduct of official duties. There is consensus on much of the draft policy, however, Commissioners requested additional input from staff and more time to discuss three issues before finalizing the Commission's policy.

Issue 1. Definition of Conflict of Interest – The following are options for defining conflict of interest. Multiple options may be selected. The first three options are consistent with the federal Council process. A conflict of interest exists when a Legislative Commissioner, Governor Appointee or proxy:

1. Has greater than 10 percent interest in the total harvest of the fishery under consideration by the Commission;
2. Has greater than 10 percent interest in the marketing or processing of the total harvest of the fishery under consideration by the Commission;
3. Has full or partial ownership of more than 10 percent of the vessels using the same gear type within the fishery under consideration by the Commission;
4. Is an employee or representative of a harvesting entity that harvests greater than 10% of total harvest of the fishery under consideration by the Commission. This includes, but is not limited to, fishery association employees, lobbyists, and industry representatives;
5. Is an employee or representative of an environmental organization involved in fisheries related issues; or
6. Derives X% (need to select a %) of his/her income from the fishery under consideration by the Commission, including for-hire fisheries.

Issue 2. Legislative Commissioner, Governor Appointee and Proxy Recusal – The following describes potential options for Commissioner/proxy recusal once he/she is determined to have a conflict of interest. Additionally, should all conflicts be handled with the same recusal standard? When a conflict of interest exists as defined under the Commission's Policy on Financial Disclosure and Conflict of Interest, a Commissioner or proxy must:

1. No longer sit at the table as a participating board/section member. The Legislative Commissioner, Governor Appointee, or proxy will not participate in

the board/section discussion on an issue and in the state caucus prior to a vote. The Legislative Commissioner, Governor Appointee, or proxy can comment from the public microphone if recognized by the board/section chair during the public comment portion of the agenda.

2. Prior to the discussion of an issue, the Legislative Commissioner, Governor Appointee, or proxy must announce to the board/section that he/she is recusing himself/herself from participating in the caucus on voting. Once recused, the Legislative Commissioner, Governor Appointee, or proxy will be able to participate in the board/section debate but will not be able to make or second motions on the issue. (This option is similar to the regional council process and was approved as the preferred option by the Executive Committee at the 2014 Spring Meeting.)
3. Prior to discussion of an issue, the Legislative Commissioner, Governor Appointee Commissioner, or proxy must announce to the board/section that he/she has a financial conflict of interest. Following this announcement, the Legislative Commissioner, Governor Appointee, or proxy may still fully participate in the deliberations of the issue. This participation can include debate, making motions, seconding motions, and participating in the state caucus prior to a vote.
4. Prior to the discussion of an issue, the Legislative Commissioner, Governor Appointee, or proxy must announce to the board/section that he/she is recusing himself/herself from making/seconding motions. Once recused, the Legislative Commissioner, Governor Appointee, or proxy will be able to participate in deliberations but will not be able to make or second motions on the issue. The Commissioner/proxy will be able to participate in the state's caucus. (This option is similar to option 2, but Commissioners/proxies will be able to participate in state caucus. This was introduced at the LGAs meeting.)

Issue 3. Definition of Minor Child – On the financial disclosure form a number of questions address “you, your spouse, partner, or minor child.” Commissioners agreed a more detailed description of minor child needs to be added.

1. The following definition focuses on guardianship of child. Sections could be modified to read: “you, your spouse, partner, or dependent child for which you are a guardian”.
2. The following definition focuses on living arrangements of child. Sections could be modified to read “you, your spouse, partner, or domiciled child”.
3. The current language could be maintained and it would apply to any minor child regardless of living arrangements and dependency. This language created some concern among Commissioners because there could be a situation where someone is unaware of all activities of a minor child that is not a dependent or currently living in the same home.

ATLANTIC STATES MARINE FISHERIES COMMISSION

August 6, 2014



Policy on Commissioner Financial Disclosure and Conflict of Interest

Draft for review by Commissioners at the 2014 Summer Meeting

Introduction

The Atlantic States Marine Fisheries Commission is comprised of three Commissioners from each of the 15 Atlantic coastal states. As an Interstate Compact of the 15 Atlantic coastal states, the Commission affords great deference to its member states in selecting Commissioners to represent them. The diverse personal, educational, financial, and professional backgrounds of Commissioners are one of the Commission's greatest assets. However, this diversity means that some Commissioners will have personal financial interests in the outcomes of management decisions at times. The Commission's Policy on Financial Disclosure and Conflict of Interest was implemented to ensure transparency, accountability, and integrity in the Commission's decision-making process.

Commissioner Code of Conduct

Page 7, Section 1, Paragraph (B) of the Commission's Rule and Regulations provides:

Code of Conduct. Commissioners appointed by the states are responsible for upholding the integrity of the Commission and its member states. No Commissioner shall engage in criminal or disgraceful conduct prejudicial to the Commission, any other Commissioner or any other state. No Commissioner shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of official duties. The Executive Committee shall have the sole authority to consider allegations of breaches of this code, including appeals from Commissioners alleged to be in violation herewith. In the case of a breach, the Executive Committee may direct the Chair to notify the appropriate appointing authority in the Commissioner's home state.

Discussion

The Commission has a long-standing tradition of stakeholders serving as Commissioners. However, the member states making up the Commission have varying disclosure requirements to characterize direct or indirect financial interests. Further, these disclosures are not always made available to the Commission, its Commissioners, or the public. Additionally, Commissioners frequently appoint proxies and are not required by the Commission to notify their home states of such appointments or the proxy's financial interests.

Uncertainty about the financial interests of Commissioners or proxies have raised concern regarding their ability to conduct their duties in a "fair and impartial" manner. There is a delicate balance between providing expertise in Commission deliberations and influencing outcomes when stakeholders are serving as Commissioners.

Policy on Financial Disclosure

The Policy on Financial Disclosure and Conflict of Interest requires financial disclosure and notification of the state appointing authority when a Legislative Commissioner or Governor Appointee is appointed to the Commission as well as when a Legislative Commissioner or Governor Appointee appoints a proxy. This policy applies only to Legislative Commissioners and Governors' Appointees and their proxies since Administrative Commissioners, by virtue of their standing as state officials, are required by their state to fully disclose their financial and any other conflicts of interests.

Financial Disclosure

1. All Legislative Commissioners and Governors' Appointees are required to complete a Disclosure Form. The form collects basic information on financial interest that may impact the ability of a Legislative Commissioner Governor Appointee to conduct business in a "fair and impartial" manner. The form will not collect specific dollar amounts of investments or holdings, only the broad category of those financial interests.
2. All proxies appointed by a Legislative Commissioner and Governor Appointee are required to complete a Disclosure Form.
3. Completed Disclosure Forms must be submitted to the Executive Director by February 1st of each year. If a Legislative Commissioner, Governor Appointee or their proxy is appointed after February 1st, a completed Disclosure Form must be submitted prior to participation in a Commission meeting.
4. Completed Disclosure Forms will be made available to the public through the Commission's website and will be available for public review at Commission meetings.
5. Disclosure Forms must be updated annually by Legislative Commissioners and Governors' Appointees and their proxies. If a Legislative Commissioner or Governor Appointee or proxy does not have any changes to his/her Disclosure Form, the previous year's form can be resubmitted.

Notification of Proxy Appointment

1. All Legislative Commissioners and Governors' Appointees who appoint a proxy are required to notify their home state's appointing authority when such an appointment occurs. The notification must include a copy of the proxy's Disclosure Form. This will ensure the Commissioner's appointing state is aware that a proxy is representing the state on the Commission. A copy of this notification must be supplied to the Commission's Executive Director.

Conflict of Interest Definition

The following are options for defining conflict of interest. Multiple options may be selected. The first three options are consistent with the federal Council process. A conflict of interest exists when a Legislative Commissioner, Governor Appointee, or proxy:

1. Has greater than 10 percent interest in the total harvest of the fishery under consideration by the Commission;
2. Has greater than 10 percent interest in the marketing or processing of the total harvest of the fishery under consideration by the Commission;
3. Has full or partial ownership of more than 10 percent of the vessels using the same gear type within the fishery under consideration by the Commission;

4. Is an employee or representative of a harvesting entity that harvests greater than 10% of total harvest of the fishery under consideration by the Commission. This includes, but is not limited to, fishery association employees, lobbyists, and industry representatives;
5. Is an employee or representative of an environmental organization involved in fisheries related issues; or
6. Derives X% (need to select a %) of his/her income from the fishery under consideration by the Commission, including for-hire fisheries.

Legislative Commissioner, Governor Appointee, and Proxy Recusal

1. No longer sit at the table as a participating board/section member. The Legislative Commissioner, Governor Appointee, or proxy will not participate in the board/section discussion on an issue and in the state caucus prior to a vote. The Legislative Commissioner, Governor Appointee, or proxy can comment from the public microphone if recognized by the board/section chair during the public comment portion of the agenda.
2. Prior to the discussion of an issue, the Legislative Commissioner, Governor Appointee, or proxy must announce to the board/section that he/she is recusing himself/herself from participating in the caucus on voting. Once recused, the Legislative Commissioner, Governor Appointee, or proxy will be able to participate in the deliberations but will not be able to make or second motions on the issue. (This option is similar to the regional council process and was approved as the preferred option by the Executive Committee at the 2014 Spring Meeting.)
3. Prior to discussion of an issue, the Legislative Commissioner, Governor Appointee, or proxy must announce to the board/section that he/she has a financial conflict of interest. Following this announcement, the Legislative Commissioner, Governor Appointee, or proxy may still fully participate in the debate of the issue. This participation can include debate, making motions, seconding motions, and participating in the state caucus prior to a vote.
4. Prior to the discussion of an issue, the Legislative Commissioner, Governor Appointee, or proxy must announce to the board/section that he/she is recusing himself/herself from making/seconding motions. Once recused, the Legislative Commissioner, Governor Appointee, or proxy will be able to participate in deliberations but will not be able to make or second motions on the issue. The Legislative Commissioner, Governor Appointee, or proxy will be able to participate in the state's caucus. (This option is similar to option 2, but Legislative Commissioner, Governor Appointee, or proxy will be able to participate in state caucus. This was introduced at the LGAs meeting.)

Notification of Home State Appointing Authority

If any of the following conditions are met, the Commission will notify the appropriate appointing authority in the home state of the Legislative Commissioner or Governor Appointee regarding its concern about the ability of the Commissioner or proxy to perform his/her duties in a fair and impartial manner.

1. The Legislative Commissioner, Governor Appointee, or proxy has a financial conflict of interest as defined in the “Commissioner Recusal” section of this document.
2. The Legislative Commissioner, Governor Appointee, or proxy has been found in violation of criminal or civil state or federal fishery law or regulation.
3. The Executive Committee determines that a Legislative Commissioner, Governor Appointee, or proxy is not performing his/her duties consistent with this policy or other Commission guidance provisions.

Concerns over Financial Disclosure and Conflict of Interest

1. Concerns over conflicts of interest should be brought to the attention of the Chair of the Commission for consideration by the Executive Committee. The Executive Committee will determine if any of the provisions of the Commission’s Policy on Financial Disclosure and Conflict of Interest have been violated and decide the appropriate recourse.

ATLANTIC STATES MARINE FISHERIES COMMISSION

DISCLOSURE FORM FOR LEGISLATIVE COMMISSIONERS, GOVERNORS' APPOINTEES & LGA PROXIES

This form is to be filled out by all Legislative Commissioners, Governors' Appointees, and their proxies. The intent of this form is to provide a disclosure of direct and indirect financial interests that may impede the ability of a Legislative Commissioner, Governor Appointee, or and proxy to execute his/her duties in a fair and impartial manner. The information on this completed form will be provided to other Commissioners and made available to the public for review. Please answer all the questions that apply to your situation. If this form is for a proxy, the appointing Legislative Commissioner or Governor Appointee and the proxy must sign the form and return it to the Commission by February 1st of each year. For appointments made after February 1st, a completed disclosure form must be submitted to the Commission prior to Commissioner/proxy participation at the next scheduled Commission meeting.

Name of Commissioner/Proxy: _____

Address: _____

City, State, Zip: _____

Phone (day): _____ Email: _____

Phone (mobile): _____

Type of Commissioner:	Governor's Appointee	Legislative Commissioner
Type of Proxy:	Proxy for Governor's Appointee	Proxy for Legislative Commissioner

Name of Commissioner appointing proxy: _____

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FOR ALL LEGISLATOR AND GOVERNORS' APPOINTEE COMMISSIONERS/PROXIES

1. Have you been found in violation of criminal or civil state or federal fishery law or regulation or convicted of any felony or crime over the last three years?

Yes _____ No _____

2. Are you a member of any fishermen's organizations or clubs?

Yes _____ No _____

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If "yes," please list them below by name.

- 3. How many years have you lived in state you will be representing? _____ years
- 4. Do you, your spouse, partner or **minor child** have a direct or indirect financial interest in commercial fishing or for-hire fishing?
Yes _____ No _____

If "yes," please select all that apply:

Vessel Owner (Full or Partial) _____ Vessel Captain _____
Seafood Processor or Dealer _____ Vessel Crew _____
Gear Supplier/Manufacturer _____ Other (Please Specify) _____

FOR COMMERCIAL FISHERMEN:

- 1. How many years have you, your spouse, partner or **minor child** been employed in the commercial fishing business? _____ years
- 2. Are you, your spouse, partner or **minor child** employed only in commercial fishing?
Yes _____ No _____
- 3. What is the predominant gear type used? _____
- 4. What are the predominant species targeted? _____
- 5. Do you, your spouse, partner or **minor child** harvest greater than 10 percent of the total annual harvest of any species managed by the Commission?
Yes _____ No _____
- 6. Do you, your spouse, partner or **minor child** have full or partial ownership of more than 10 percent of the vessels using the same gear type within the fishery under consideration by the Commission?
Yes _____ No _____

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If yes to either question above, please complete the following:

- Vessel/Entity Name: _____
- Description/Relationship of Financial Interest: _____
- Fishery (Species) of Interest/Gear Type: _____

FOR SEAFOOD PROCESSORS & DEALERS:

1. How long have you, your spouse, partner or **minor child** been employed in the business of seafood processing/dealing? _____ years
2. Are you, your spouse, partner or **minor child** employed only in the business of seafood processing/dealing?

Yes _____ No _____ If “no,” please list other type(s) of business(es) and/or occupation(s):

3. Do you, your spouse, partner or **minor child** process and/or market greater than 10 percent of the total annual harvest of any species managed by the Commission?

Yes _____ No _____

FOR CHARTER/HEADBOAT CAPTAINS/MATES:

1. How long have you, your spouse, partner or **minor child** been employed in the charter/headboat business? _____ years
2. Are you, your spouse, partner or **minor child** employed only in the charter/headboat industry?

Yes _____ No _____

If “no,” please list other type(s) of business(es) and/occupation(s): _____

FOR RECREATIONAL FISHERMEN:

1. How long have you engaged in recreational fishing? _____ years

2. Are you, your spouse, partner or **minor child** working, or have you, your spouse, partner or **minor child** ever worked in any area related to the recreational fishing industry (for-hire fishery, recreational advocacy, tackle shop owner employee etc.)?

Yes _____ No _____

If "yes," please explain.

FOR COMMERCIAL OR RECREATIONAL FISHERY ORGANIZATION REPRESENTATIVES:

1. How long have you, your spouse, partner or **minor child** been employed by a commercial or recreational fishery organization? _____ years

List all commercial or recreational fishery organizations you have been employed by during the past three years:

2. Are you, your spouse, partner or **minor child** employed only commercial or recreational fishery organization?

Yes _____ No _____ If "no," please list other type(s) of business(es) and/or

Occupation(s): _____

FOR NON-GOVERNMENTAL ORGANIZATIONAL (NGO) OR ENVIRONMENTAL ADVOCATES:

1. How long have you, your spouse, partner or **minor child** been employed by a Non-Governmental Organization (NGO) or environmental advocacy organization? _____ years

List all NGO/environmental advocacy organizations you have been employed by during the past three years:

2. Are you, your spouse, partner or **minor child** employed only by an NGO or environmental advocacy organization?

Yes _____ No _____ If “no,” please list other type(s) of business(es) and/or

Occupation(s): _____

FOR OTHER INTERESTED PARTIES:

1. How long have you been interested in fishing and/or fisheries management? _____ years

2. Are you employed in the fishing business or the field of fisheries management?

Yes _____ No _____

If “no,” please list other type(s) of business(es) and/or occupation(s):

3. Are you employed in an advocacy role for fisheries, natural resources management, environmental issues, habitat, etc.? Yes _____ No _____

If “yes,” please explain):

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FOR LEGISLATIVE COMMISSIONERS, GOVERNORS' APPOINTEES AND PROXIES:

In the space provided below, please provide the Commission with any additional information which you feel would allow other Commissioners members and the public to fully understand your financial interest in fishing, fishery management, or the fishing industry.

All the information included in this disclosure form is accurate and complete. If any information changes, I will notify the Commission and submit a new disclosure form prior to participating in a meeting of the Commission.

Commissioner Signature: _____

Date: _____

Proxy Signature: _____

Date: _____