

Cape Hatteras National Seashore—Negotiated Rulemaking Committee

Ethics Responsibilities of Members

Background

Individuals appointed to serve as members of advisory committees may come from both the public and private sectors. These individuals provide the Government with needed expert advice and diverse views. Some members may be regular Government employees. Other members may be appointed to serve as special Government employees, i.e., an officer or employee who is retained, designated, appointed, or employed by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days.

However, many advisory committee members do not have any Government employee status. Most of these members will provide services in a non-employee “representative” status. These representative members are specifically appointed to a committee to provide the committee with the points of view of nongovernmental entities or of a recognizable group of persons (e.g., an industry sector, labor unions, or environmental groups, etc.) that have interests in the subject matter under a committee’s charge. Unlike employee members, representative members are not being appointed on a committee to exercise their own individual best judgment on behalf of the Government. Instead, representatives serve as the voice of groups or entities with a financial interest or other stake in a matter before an advisory committee.

Government employees and representatives on advisory committees are not treated the same for purposes of applying Federal ethics rules. Regular and special Government employee members are expected to provide their own independent judgment in committee deliberations. Therefore, they are expected to discuss and deliberate in a manner that is free from conflicts of interest. Consequently, they must comply with applicable conflict of interest laws, standards of conduct rules, and financial disclosure requirements (although, given their limited service as employees, special Government employees are subject to Federal ethics rules in a somewhat less rigorous manner.) In contrast, Federal ethics rules do not apply to those members serving as representatives. However, to ensure that every citizen can have complete confidence in the integrity of the advisory committee process, the National Park Service addresses potential conflicts of interest of representative committee members through the inclusion of certain ethics responsibilities in the committee charter.

Charter Language

“No committee or subcommittee member shall participate in any specific party matter including a lease, license, permit, contract, claim, agreement, or related litigation with the Department in which the member has a direct financial interest.”

Specific Party Matter

In addition to the examples cited in the charter, the term includes grants, applications, enforcement actions, request for a ruling or other determination, controversy, charge, accusation, arrest, investigation, or other matter involving a specific party or parties. It does not include matters of general applicability, such as rulemaking; legislation; the formulation of general policy, standards, or objectives; or other actions of general application.

Direct Financial Interest

The term “direct financial interest” means the financial interest of the member; the member’s spouse, dependent child, household member, or general partner; an organization in which the member is serving as officer, director, trustee, general partner, or employee; or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment.

Application to This Advisory Committee

The charter language prohibits a committee member from participating, as part of his or her advisory duties, in any committee action regarding a specific party matter, with the Department of the Interior, in which the member has a direct financial interest. In this case, the committee’s function is to assist in the development of special regulations for management of off-road vehicles at Cape Hatteras National Seashore. Unlike a lease, permit, contract, etc., such a regulation is considered a matter of general applicability—not a specific party matter. Accordingly, it is unlikely that a member would be in a position to participate in any specific party matter in the conduct of his or her committee duties. In the unlikely event that a member finds himself or herself in a position to take any committee action regarding a specific party matter with the Department, that could affect his or her direct financial interest, the member should notify the Designated Federal Official and recuse himself or herself from participating in that action. If a member is unsure whether or not recusal is necessary, or has any other questions regarding his or her ethics responsibilities, the member should contact the Assistant Ethics Counselor for the National Park Service, Peggy Moran-Gicker, at (202) 354-1981 or Peggy_Moran-Gicker@nps.gov.