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Conflict of Interest Waiver Request Template

Memorandum

To: Director (Service Ethics Counselor)

From: Deputy Ethics Counselor

Subject: Conflict of Interest Waiver for *[Employee Name]*

The purpose of this memorandum is to request that you grant *[Employee Name]* a waiver of the criminal conflict of interest provisions that may apply to *[his or her]* service in an official capacity as *[an officer or a member of the Board of Directors, or other position]* of the *[name of outside organization]*. *[Employee Name]*'s official U.S. Fish and Wildlife Service (Service) duty is to serve as the *[title]*. As such, *[he or she]* *[explain the employee's duties, including information that shows how they relate to service in the outside organization (may require more than one sentence)]*.

The criminal conflict of interest statute, 18 U.S.C. 208(a), requires that an employee refrain from participating personally and substantially in an official capacity in any particular matter that will have an effect on the financial interests of any organization in which the individual serves as an officer, director, trustee, or employee.

In the absence of: (1) specific statutory authority placing a Federal employee in an officer or director position in an *ex officio* capacity, (2) a release of fiduciary obligations by the organization (if permitted by State law), or (3) a waiver of the requirements of 18 U.S.C. 208(a), the statute effectively would preclude *[Employee Name]*'s service, as an official duty activity, as *[officer, director or other position]* with the *[name of outside non-profit organization]*.

[Include paragraph describing the outside organization and its mission.]

A memorandum of understanding between the Service and the *[name of outside organization]* concerning the service of *[Employee Name]* is attached.

Because *[Employee Name]*'s appointment with the *[name of outside organization]* is not a result of a statute or release of fiduciary obligations, *[he or she]* has requested that you, as the official to whom waiver authority is delegated, authorize *[his or her]*

participation in certain matters that may affect the financial interests of the [*name of outside non-profit organization*]. Under 18 U.S.C. 208(b)(1), you may grant a waiver if you determine that the disclosed financial interest is “not so substantial as to be deemed likely to affect the integrity of the employee’s services to the Government.”

In the course of [*his or her*] assigned duties, the following types of particular matters potentially could come before [*Employee Name*] for [*his or her*] personal and substantial participation:

- (1) Matters of general applicability, such as legislation, regulation, or policy that may affect the financial interests of the [*name of outside organization*] as a member of a class of similarly situated entities; [*Are there any of these matters before the person requesting the waiver? If so, then provide information about them. If not, then state “none are known at this time”*];
- (2) Matters that affect the financial interests of the [*name of outside organization*] through investigation or regulation of the organization;
- (3) Matters involving specific parties, such as grants, contracts, or application approvals that specifically involve the [*name of outside organization*] or otherwise affect its financial interests; or
- (4) Other miscellaneous matters involving the conduct of the [*name of outside organization*] and Service support.

While performing the usual and customary duties of the position of [*officer, director, or other position*] with an outside organization as an official Service activity, any actions taken either in the Federal workplace or at the organization that affect the financial interests of the outside organization are deemed official matters to which 18 U.S.C. 208(a) applies. For example, such actions may include:

- (1) Requesting that official travel funds be spent or other Government resources be used for the employee to conduct the affairs of the organization;
- (2) Speaking as an official duty activity at a conference or other meeting of the organization; and
- (3) Providing advice and consultation with respect to, or otherwise conducting, the business affairs of the organization, including voting on matters that come before the [*name of outside organization*] officers and board members.

While the financial impact may be insignificant, under well-settled precedent, 18 U.S.C. 208(a) does not differentiate between minor and major impacts.

I believe that a waiver under 18 U.S.C. 208(b)(1) is justified for the following reasons:

First, because [Employee Name] will serve as [position with the outside organization] as an official duty activity, and [his or her] position in the outside organization is fully known to the Service, the risk that the integrity of the services that the Government expects from [Employee Name] would be affected by [his or her] service is greatly diminished. The Service has already determined that, to a significant degree, the interests of the Service and the interests of the [name of outside organization] are in agreement. The Service expects that its interests and the interests of the [name of outside organization] can both be furthered through the performance of [Employee Name]'s official duties and service with the [name of outside organization].

Second, most, if not all, of the matters in which [Employee Name] would participate would not have a significant effect on the financial interest of the [name of outside organization] because of the limits in this request described below. [Employee Name] will have no involvement in any Service grants, contracts, cooperative agreements, or other Federal support (financial or otherwise) to the [name of outside organization] other than the use of travel or training funds solely for [Employee Name]'s service with the organization. [Employee Name] will not participate in investigations of the activities of the [name of outside organization], other than as a provider of information or testimony. [Employee Name] will not participate in developing regulations that would impact the [name of outside organization] or be involved in enforcing regulations pertaining to the [name of outside organization].

The Service has no current grants, contract, cooperative agreements or other agreements with the [name of outside organization] that involve the transfer of public funds to [name of outside organization]. *[Note: Please verify this information. If the Service has any arrangements to transfer funds to the outside organization, please discuss with the Service Deputy Ethics Counselor.]*

If approved, the requested waiver will allow [Employee Name] to serve as an [officer or a member of the Board of Directors, or other position] in [name of outside organization] EXCEPT for the particular matters listed below that might have a direct and predictable effect on the financial interests of the [name of outside organization] as to which [Employee Name] has committed to recuse [himself or herself].

LIMITATIONS:

[Employee Name] may not participate in any of the following particular matters because they may affect the financial interests of the Service and the [name of outside organization] or otherwise violate Federal laws or regulations:

1. Any involvement or participation in decisions pertaining to Service grants, contracts, cooperative agreements [list any other types of agreements that the Service might have with the outside organization], or

other support to include personnel and equipment to the organization, except the following actions are permitted:

- “(a) Requesting that official travel funds be spent or other Government resources be used for *[name of employee]* to conduct the affairs of the organization;
- (b) Speaking as an official duty activity at a conference or other meeting of the organization; and
- (c) Providing advice and consultation with respect to, or otherwise conducting, the business affairs of the organization, including voting on matters that come before the *[name of outside organization]* officers and board members.”

2. Any involvement or participation in any regulatory or investigatory matters on behalf of any Department or agency of the U.S. Government involving the *[name of outside organization]* other than as a provider of information or testimony.
3. Preparation or presentation of requests from the *[name of outside organization]* to obtain any Federal funds, manpower, or any other form of Federal support on its behalf to support *[name of outside organization]* activities, except as permitted in 1(a) through (c) above.
4. Lobbying on behalf of the *[name of outside organization]* in any manner to a member of Congress, a jurisdiction, or an official of any government as prohibited by 18 U.S.C. 1913. This includes using money appropriated by an enactment of Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence a member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, unless specifically authorized by Act of Congress. This does not prevent employees of the United States or of its departments or agencies from communicating to members of Congress or other officials, at their request, or to Congress or such official, through the proper official channels regarding requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of public business.
5. Approval of Federal travel authorizations to travel on behalf of the *[name of outside organization]*.
6. Participation in fundraising activities of the *[name of outside organization]*.
7. Signing a training authorization to use Service funds to pay for an employee

to attend a conference or other meeting of the organization.

A copy of a recusal memorandum is attached. In this manner, [Employee Name]'s service with the [name of outside organization] is severed from his service as the [Employee's Service duty title] on particular matters where both the [name of outside organization] and the Service may have financial interests, so [he or she] may avoid any potential that [he or she] could act contrary to interests of the Service for the outside organization.

[Employee Name] understands and agrees that, as an official duty activity, no separate compensation or reimbursements may be received from the [name of outside organization] in connection with [his or her] service. Travel, lodging, per diem, and other incidental expenses incurred by [Employee Name] on behalf of the [name of outside organization], if any, may be accepted by the Service under 31 U.S.C. 1353, as appropriate. Acceptance of [employee name's] travel expenses, if any, from [name of outside organization] must be accomplished using Form DI-2000, which must be approved by the Service Ethics Office prior to the travel. If circumstances do not allow prior approval, the form must be approved within 7 days after the trip.

Attachments:

1. MOU between the Service and the [name of outside organization], dated
2. [Employee Name] recusal letter, dated
3. Form DI-2000, *Acceptance of Travel Expenses from a Non-Federal Source*

DECISION:

_____ Waiver granted, subject to the terms and conditions stated above, based on my determination, made in accordance with 18 U.S.C. 208(b)(1), that the disclosed financial interests are not so substantial as to be deemed likely to affect the integrity of the service that the Government may expect from the employee.

_____ Waiver denied.

Director (Service Ethics Counselor)
U.S. Fish and Wildlife Service

Date

I have read and fully understand this waiver decision and its limitations. I agree to fully comply with its limitations and acknowledge my understanding and compliance by signing below:

[Employee name]

Date

[Title]

U.S. Fish and Wildlife Service

Memorandum of Understanding Template

Memorandum of Understanding between the U.S. Fish and Wildlife Service and the [organization name]

1. This Memorandum of Understanding establishes the agreement between the U.S. Fish and Wildlife Service (Service) and [organization name] concerning the service of [Employee Name] as an [officer or member of a Board of Directors] of the [organization name] as a part of [his or her] official Government duties through [month/year]. [Employee Name] will be serving as [title]. It is estimated that the amount of official time [Employee Name] will spend on this activity will be approximately [number] hours per month.

2. Before [Employee Name] performs any duties as an [officer or member of a Board of Directors] of the [organization name] as part of [his or her] official duties, [he or she] must receive a waiver under the Federal conflict of interest statute, 18 U.S.C. 208. Waivers that permit an employee to serve as an officer or a member of a Board of Directors are limited and enable participation as a Service employee without violating 18 U.S.C. 208. However, even if an 18 U.S.C. 208 waiver is granted, [Employee Name] may not make or participate in any official decisions on behalf of the Service or the Department regarding any request from the [organization name] for public funds or support. [Employee Name] may not take any actions that violate Federal, State, or local law. Requests for public funds or support include, but are not limited to grants, cooperative agreements, contracts, or any other actions where the [organization name] is requesting any form of support from the Department or one of its bureaus. To ensure that no conflicts of interest arise, the [organization name] agrees that it will notify the Service Ethics Office if it intends to seek public funds or support from the Department or one of its bureaus. Notice will be provided to: the Service Ethics Office at: Deputy Ethics Counselor, U.S. Fish and Wildlife Service, Department of the Interior, 620 S.W. Main, Suite 201, Portland, Oregon, 97205.. The [organization name] also understands that if it elects to request public funds or support from the Department or one of its bureaus, [Employee Name] may be directed to resign as an [officer or board member] in [his or her] official capacity.

3. The primary beneficiary of [Employee Name]'s service as an [officer or board member] in the [organization name] is intended to be the Service. It is expected that the benefits to the Service will include, but not be limited to the following:

- a. Acquisition of state-of-the-art technical information about

- [name subjects]*.
- b. Knowledge about organizational arrangements and relationships of organizations with which the Service interacts, in order to enhance the working relationships between the Service and such organizations;
- c. Improved understanding of current issues in the *[name the field of endeavor]* that concern Service missions and operations;
- d. Use of professional networks and channels to disseminate information relevant to the accomplishment of Service missions; and
- e. Use of other mechanisms to facilitate accomplishment of Service missions, functions and processes, such as meetings, conferences, symposia, and publications.

4. To avoid the possibility of an actual or potential use of public office for private gain, when *[Employee Name]* uses official time to serve as an *[officer or board member]*, the following principles apply:

- a. Federal employees may not represent anyone other than the United States before an agency or court in connection with any matter in which the United States is a party or has a direct and substantial interest. (18 U.S.C. 205)
- b. When serving as an officer or member of a Board of Directors of a non-Federal organization in an official capacity, Federal employees must refrain from any involvement or participation in or taking any official action on behalf of the Department of the Interior or its bureaus on any application or request for public funds or other support by the organization. (18 U.S.C. 208)
- c. If a Federal employee's participation in a project undertaken in conjunction with a private organization was done as a part of his or her official duties, the Federal employee is prohibited from receiving any supplementation of his/her Federal salary. (18 U.S.C. 209)
- d. Federal employees are prohibited from using appropriated funds, official time, or Government equipment to instigate or generate lobbying activity on any issue pending before or of interest to the Congress or an official of any government. (18 U.S.C. 1913)
- e. Federal employees are prohibited from being involved in the fundraising activities of the *[organization name]*.

- f. Federal employees may not use official Government postage, stationery, envelopes, or labels for other than official Government business. (18 U.S.C. 1719)

The relationship between the [organization name] and the Service addressed in this document is intended to enhance service to the American public through more efficient applications of Service programs. All actions should be directed toward attainment of that mutually beneficial goal.

5. Under Federal law, a Federal employee serving in his or her official capacity owes his or her first duty of loyalty to the Government of the United States. By signing this memorandum of understanding, the [organization name] acknowledges and consents to the fact that [Employee Name] is acting as an [officer or a member of a Board of Directors] in that organization in [his or her] official capacity as a Service employee. [Employee name] will owe [his or her] first duty of loyalty to the United States Government and specifically the Service before that of the [organization name] if those interests ever conflict. Consequently, to the fullest extent permitted by State law, the [organization name] agrees to waive any fiduciary duty owed by [Employee Name] to the [organization name] as an [officer or a member of a Board of Directors] when [Employee Name] acts in the interests of the United States Government. [Employee Name] retains a fiduciary duty to act in the best interests of the [organization name] except when in conflict with the interests of the United States Government.

This memorandum is not intended to impose on the [organization name] any obligations or restrictions other than those established in it. The [organization name] has an obligation to respect the limitations described above on the activities and function of [Employee Name] and benefits which may be received by the Service. This agreement does not constitute a representation or warranty by the [organization name] as to the benefits which the Service will receive from [Employee Name]'s service as an officer or member of the Board of Directors. Nor does the [organization name] assume any obligation to inquire into or enforce [Employee Name]'s compliance with paragraph 4 above.

(Regional Director or other Directorate Member)
U.S. Fish and Wildlife Service

[Name]

[Position]

[*Organization name*]

Date:

Recusal Memorandum Template

Memorandum

To: [Supervisor Name and Title]

From: [Employee Name, title, and address]

Subject: Notice of Recusal by [Employee Name]

- 1) This is to notify you that I have an interest in the [*name of outside organization*] because I have been elected as [*officer or Board of Director position*] with the organization through [*end date month/year*]. **I will not be serving as [*officer or Board of Director position*] in an official Service capacity unless I am granted a waiver of the conflict of interest statute, 18 U.S.C. 208(b)(1), by the Service Director (Ethics Officer).**
- 2) Even though a waiver will allow me to serve as [*officer or Board of Director position*] and act on [*name of outside organization*] matters using limited Government time and resources, I will not involve myself with the following:
 - a. Any Service grants, contracts, cooperative agreements, or other agreements with the [*name of outside organization*];
 - b. Providing support to the [*name of outside organization*], including personnel or equipment from or to the [*name of outside organization*], except that the following actions are specifically permitted:
 - (1) Requesting that official travel funds be spent or other Government resources be used for me to conduct the affairs of the organization,
 - (2) Speaking as an official duty activity at a conference or other meeting of the organization, or
 - (3) Providing advice and consultation with respect to, or otherwise conducting, the business affairs of the organization including voting on matters that come before the [*name of outside organization*] officers and board members;
 - c. Directing a subordinate to speak at any conference or other meeting of the [*name of outside organization*];
 - d. Participating in investigations of the activities of the [*name of outside*

- organization*], other than as a provider of information or testimony;
- e. Developing regulations that would impact the [*name of outside organization*] or enforcing regulations pertaining to it;
 - f. Preparing or presenting requests from the [*name of outside organization*] to obtain any Federal funds, manpower, or any other form of Federal support for the organization's activities. A waiver will permit me to request official travel authorizations to attend or to be a speaker or presenter at meetings or conferences of the [*name of outside organization*], but approval of my travel authorization requests must be based on a determination by my travel approval authority that my attendance or presentation at the meeting or conference is in the best interests of the Service;
 - g. Lobbying on behalf of the [*name of outside organization*] in any manner to a member of Congress, a jurisdiction, or an official of any government as prohibited by 18 U.S.C. 1913. This includes the use of money appropriated by any enactment of Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence a member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, unless specifically authorized by Act of Congress. This does not prevent employees of the United States or of its departments or agencies from communicating to members of Congress or other officials, at their request, or to Congress or such official, through the proper official channels regarding requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business;
 - h. Participation in fundraising activities of the [*name of outside organization*]; or
 - i. Approval of Federal travel authorizations of Service employees to attend meetings or conferences of the [*name of outside organization*].

3. I have retained a copy of this recusal memorandum for my records and sent a copy to the Service Ethics Office.