

**Conflict of Interest Policies  
of the  
Massachusetts Ocean Partnership**

Adopted the 7thDay of February, 2008  
(Revised based on 1/30/08 Governing Board meeting)

## **Conflict of Interest Policy**

MOP is a public/private partnership created for the purpose of advancing integrated multi-use ocean management of MA coastal oceans waters. MOP is an unincorporated entity under the fiscal sponsorship of the University of Massachusetts, Boston/McCormack Graduate School of Policy Studies (UMB/MGS). Certain of MOP's operations are administered through a third party core operations administrator under subcontract to UMB/MGS. To support the work of the partnership, MOP, through its fiscal sponsor or core operations administrator, will procure services from outside consultants.

MOP's work is currently supported by funding from a private foundation, through its fiscal sponsor UMB, and will be seeking to expand its fundraising capabilities and otherwise accomplish its purposes.

Governing Board members owe a general duty of care to MOP that includes the obligation of making reasonable inquiry to ensure they are sufficiently informed to act on behalf of MOP. The duty of loyalty that Governing Board members owe to MOP requires, in part, avoiding material conflicts of interest in its actions and decisions and placing the best interests of MOP as priority over the members' personal interests or those of related persons or entities. Failure of Governing Board members to honor their duties of care and loyalty to MOP can diminish the ability of MOP to accomplish its purposes, and could potentially expose members and MOP to the risks of legal action.

### Article I: Purpose

The general purpose of MOP's conflict of interest policy (COI) is to promote transparency, fairness and collegiality in partnership operations. In procurement matters, the COI policy specifically *does not* preclude partners from competing for MOP-issued contracts; as partners comprise many of the most knowledgeable players in marine science and policy they are encouraged to participate in MOP's competitive bidding processes. In programmatic matters, the COI policy *does not* constrain partners' substantive positions on issues (except, as noted in the statement of endorsement, to support implementation of the Strategic Plan as a whole). The partnership's value stems largely from being a venue where partners' bring diverse interests of their respective organization, agency, or business to the table for collaborative discussion. (See Article II. 3. below.) The specific purposes of the COI policy is to prevent the financial, institutional or personal interests of MOP board members, officers, and staff from interfering with the performance of their duties to MOP, to protect MOP's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the organization or might result in a possible excess benefit transaction, and to ensure that there is no personal, professional, or political gain at the expense of MOP. This policy is *not* designed to eliminate relationships and activities that may create a duality of interest, but to require the disclosure of any conflicts of interest and the recusal of any interested party in a decision relating thereto. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

### Article II: Definitions

#### 1. Interested Person

Any Governing Board member ("director"), Executive Committee member or member of a committee with governing board-delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

## 2. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family

- a. An ownership or investment interest in any entity with which the organization has a transaction or arrangement,
- b. A compensation arrangement with the organization or with any entity or individual with which the organization has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

## 3. Other Interest

The nature of MOP's activities and the background of its Governing Board members are certain to result in occasions where its directors have outside interests that could be affected as the result of MOP's action, presenting a conflict to the director as a decision maker on behalf of MOP. It is specifically understood that directors and committee members likely hold positions in other organizations whose substantive policies or positions on ocean management issues may at times be contradictory to those of MOP. MOP partners have therefore agreed that they:

- view the prospect of integrated multi-use ocean management and MOP's Strategic Plan to support it as positive steps for Massachusetts;
- will publicly support the goals and actions in MOP's Strategic Plan;
- will participate cooperatively in efforts to implement MOP's Five Year Strategic Plan; and
- are not constricted in any future policy positions or decisions of their respective organizations or agencies, beyond that of supporting the Strategic Plan as a whole.

## 4. Conflict of Interest

A conflict of interest shall be recognized as material, whenever the nature of the member's interest is of such significance that it would reasonably be expected to exert an influence on the member's judgment or conduct in a manner that is adverse to the interests of MOP if the member were called upon to vote on the transaction.

- Material conflicts may exist as the result of direct financial interests, such as where a member has fiduciary interest in a business or other entity competing for a MOP contract. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.
- Members may also have material conflicts that are indirect, as when the interests or potential interests of any director, officer, or staff member, or that person's close relative, or any individual, group, or organization to which the person associated with MOP has allegiance, may be seen as competing with the interests of MOP, or may impair such person's independence or loyalty to MOP.

## Article III: Procedures

### 1. Duty To Disclose

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial or other material interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board-delegated powers considering

the proposed transaction or arrangement.

## 2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial or other material interest and all material facts, and after any discussion with the interested person, s/he shall recuse her/himself from decision making and leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists, with decisions made by consensus where possible, or by a vote of the majority, if needed. The interested person may be given an opportunity to appeal the board or committee decision if s/he believes the resulting determination of COI is in error.

## 3. Procedures for Addressing Conflict of Interest

In matters of procurement, the primary objectives are to obtain, on behalf of the partnership, the most advantageous arrangement based on predetermined relevant criteria and to ensure that unfair advantage is not given to persons or entities with a connection to MOP.

- a. An interested person may make a presentation to provide relevant information and respond to questions at the governing board or committee meeting, but shall recuse her/himself from decision making and leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the conflict of interest.
- b. The chair of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the partnership can obtain with reasonable efforts *a more advantageous* transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the organization's best interest, for its own benefit, and whether it is fair and reasonable. If it is determined that the most advantageous arrangement is with a party presenting a conflict of interest, the board or committee is *not compelled to seek a less advantageous arrangement* where no conflict exists. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

## 4. Violations of the Conflicts-of-Interest Policy

- a. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate action by disqualifying the member from the bidding process or rescinding the existing arrangement in question.

## Article IV: Records of Proceedings

The minutes of the governing board and all committees with board-delegated powers shall contain

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any

action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed

- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings

#### Article V: Compensation

- a. A voting member of the governing board who receives compensation, directly or indirectly, from the organization for services is precluded from voting on matters pertaining to that member's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the organization for services is precluded from voting on matters pertaining to that member's compensation.
- c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

#### Article VI: Annual Statements

Each director and member of a committee with governing board–delegated powers shall annually sign a statement that affirms such person

- a. Has received a copy of the conflict-of-interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the organization must engage primarily in activities that accomplish its core purposes.

#### Article VII: Periodic Reviews

To ensure the organization operates in a manner consistent with MOP's core purposes and does not engage in activities that could jeopardize its capacity to raise and disburse funds for those purposes, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable and the result of arm's-length bargaining
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, and do not result in inurement, impermissible private benefit, or in an excess benefit transaction

#### Article VIII: Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, the organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.