Lobbying
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Paolo Domondon 2020

Contributors
Joyce Barafon, Tanmatra Bhanti, Atanasio Brito, Dennis Calvan, Simone Madalosso, Gabriela Polo, Arwandrija Rukma and Rocky Sanchez Tirona

Rare
Rare is the leading behavior change organization in conservation. Rare specializes in identifying proven locally-led solutions and work with partners and communities worldwide to bring these solutions to a regional and national scale.

FishForever
Fish Forever is Rare’s community-led solution to revitalize coastal marine habitats, such as coral reefs, mangroves and seagrasses, protect biodiversity, and secure the livelihoods of fisher households and their communities. It uses an innovative approach to address coastal overfishing—by empowering communities through clear rights, strong governance, local leadership, and participatory management—that protects essential fish habitat and regulates fishing activities.

Cover photograph: Jason Houston / Rare

Recommended Citation:
Overview

Rare is a 501(c)(3) organization as defined in the U.S. Internal Revenue Code, which means that as a registered non-profit in the U.S., Rare is exempt from paying taxes on most revenues. To maintain this tax-exempt status, Rare must follow certain rules - some of which are related to lobbying.

- Rare is absolutely not allowed to intervene in political campaigns.
- Rare can engage in lobbying as long as it does not constitute a substantial part of the organization’s activities.
- Rare can engage in an unlimited amount of advocacy as long as it does not cross over into lobbying or political campaign activity.

These rules apply to our activities in the U.S. as well as in foreign countries.

The sections below explain each of these areas and provide examples. A table and definitions are included at the end.

Political Campaign Activities

Section 501(c)(3) organizations are absolutely not permitted to participate or intervene in (including publishing or distributing statements), any political campaign (foreign or domestic) on behalf of (or in opposition to) any candidate for public office.

Rare cannot support or oppose any party or any candidate for public office (international, federal, state, or local). This restriction includes endorsing a candidate or party or making a donation to a candidate or party. It also includes general statements in support of or opposition to a candidate or party, as well as the use of Rare resources (staff, volunteers, office space, communication platforms such as a newsletter or Twitter feed, etc.) to support or oppose a candidate or party. This restriction is in effect at all times - both during and outside of a campaign season.
Recognizing that government officials speak at Rare events and/or are given recognition for their work, Rare requires that the Head of the Policy and Partnerships Team approve all invitations to government officials to events held close to or during campaign season. Judgement on a case-by-case basis is often involved in these decisions. Also note that the closer to an election, the more likely the activity will receive IRS scrutiny.

In a country ruled by a dictatorship, a charity's criticism of the regime in the course of advocating for democracy, the rule of law, or human rights would not ordinarily be regarded as intervention in a political campaign.

**Rare examples of potential campaign activities:**

- Rare gives recognition to certain officials for their progress in ensuring sustainable fisheries. Elections are years away and Staff does not mention any campaign or party in giving the award, but rather focuses on the decisions made around natural resource management. This event is fine.
- A month before a vote to re-elect an official, Rare presents a plaque to that official thanking him for his leadership. This event is not fine; it would be too risky to do.

Nonpartisan voter education activities or activities encouraging people to vote are not considered campaign intervention in the U.S. These include:

- Organizing a public forum
- Publishing voter education guides
- Conducting get-out-the-vote drives (please note that voter registration rules vary by state in the U.S.)
- Voter registration campaigns
- Sponsoring debates between candidates
- Nonpartisan voter protection activities.

However, these activities may not be permissible in other countries and could even constitute a crime.
Rare staff must make sure they know the rules of the country in which they are considering engaging in such activities.

**Rare example of get-out-the-vote activities:**
- Neutral, nonpartisan get-out-the-vote efforts that make no reference to any candidate or political party
- Operating in their official capacity, Rare staff encourages U.S. citizens to register to vote
- Operating as individual citizens, Rare staff volunteer with get-out-the-vote campaigns.
- Using communications and daily interactions with the community to remind people about the election
- Using meetings and events to share information and create excitement about the election
- Highlighting reasons to vote or provide information on the voting process such as "Where do I vote?" or "What's on the ballot?"
- Creating visibility about the election through posters and displays in other public areas
- Conducting a phone bank to a list of people you registered or your members
- Providing voting rights information for voters, informing them of their rights on Election Day, and providing numbers to call for help
- Helping new voters. Youth, new citizens, and other first-time voters particularly benefit from information about the voting process and encouragement to vote

Importantly, employees are not prohibited from running for office or speaking out about candidates or elections. However, they must do so as private individuals and not as representatives of the organization.

**Lobbying**
Lobbying is defined as "attempting to influence legislation;" including contacting or urging the public to contact a legislative body for the purpose of supporting the adoption or rejection of legislation.
Legislation includes:
- Actions by Congress, state legislatures, city councils, municipal councils, or other elected bodies with respect to bills or resolutions
- Foreign laws
- Confirmation of an individual for office
- Ballot initiatives or referenda
Legislation does not include:

- Actions taken by courts, administrative agencies, or other executive branch bodies
- Regulations for implementing passed laws

To be considered lobbying, a communication must refer to and reflect a view on a specific legislative proposal or legislation that has been introduced before a legislative body (international, federal, state, or local). This includes municipal or local ordinances passed by local legislatures. It does not include local regulations or guidance issued by locally elected leaders like mayors.

Lobbying includes:

- Proposing, supporting, or opposing specific legislation
- Presenting testimony at public hearings held by legislative committees
- Correspondence and conferences with legislators
- Electronic communications with legislators
- Publications that advocate specific legislative actions

U.S. federal funds, whether received as part of a grant or contract, cannot be used for any type of lobbying. If an employee's salary is paid out of a U.S. federal grant, that employee cannot take part in any lobbying activities.

Some activities that are expressly excluded from the definition of lobbying include:

- Providing technical assistance or advice to a government body or committee in response to a written request
- A communication is not a direct lobbying communication under §56.4911-2(b)(1) if the
communication is intended to provide technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either in response to a written request by the body, committee, or subdivision, as set forth in §53.4945-2(d)(2).

- A general MOU with an agency or municipality would not be considered a written request.
- The request cannot come from an individual of that body, it must be made in the name of that body, and the response must be made available to the entire body.
- The response can include advice and a position on the legislation if that advice is requested in writing, or is directly related to the requested materials.
- Appearing in front of a legislative committee to discuss legislation would be considered lobbying if there was no official request to provide testimony.
- Communications concerning legislation that may affect the organization's existence, powers, duties, 501(c)(3) status, or deductibility of contributions (referred to as "self-defense" activities)
- Nonpartisan analysis, study, or research

**Rare examples of lobbying**

- Rare meets with a senator in the Philippines urging them to vote for a bill (#2019/43) giving social protections to Bantay Dagat (coastal enforcement guards)
- Rare encourages members of a fishing community to tell their senator to vote for a bill (#2019/43) giving social protections to Bantay Dagat.
- Rare drafted the bill for Bantay Dagat that was submitted to a mayor, who then submitted it to a Congressman, who later filed the bill. Note that if there was a written request from a committee to draft the bill, then this would not be considered lobbying.
- Rare provides technical assistance to draft a municipal ordinance establishing a MA+R with no written invitation.
- Rare provides input to a Bill being drafted at the request of a senator, but the request came through another organization, rather than directly to Rare.
- A senator or congressman asks advice on (if Rare supports or opposes) a specific bill.
- Rare is invited by an agency/ministry led committee in writing to provide recommendations on legislation (unless invited by a congressional committee in writing and inputs are provided back to the entire committee in testimony or in writing, it is considered lobbying).
- Rare conducts a social media campaign that aims to get support for a specific legislation.
- Rare pays a print or digital advertisement to rally communities to talk to their local and national legislators during bill hearings and discussions.

If the communication does not refer to specific legislation, it may be considered issue advocacy (See next section).
**Issue Advocacy**

Issue advocacy consists of trying to influence public opinion. Issue advocacy is different from both political activity (about candidates and elections) and lobbying (about specific legislation), although they often all sound similar.

A nonprofit organization can do an unlimited amount of advocacy, but the organization must be careful that its advocacy does not cross the line into political activity, or if it crosses the line into lobbying, to track how much of it is done.

Organizations can take positions on important public policy issues, including those that are divisive. For example, advocacy includes educating policymakers and the public about broad social issues or encouraging people to register to vote. Get-out-the-vote drives or voter registration events conducted in an unbiased and nonpartisan manner are considered advocacy. However, voter registration events that promote a certain candidate or party are not allowed.

Advocacy includes:

- Reporting to lawmakers about how your programs have helped their constituents.
- Educating officials about matters of public policy that affect your participants.
- Sending candidates for office a policy paper or research findings.
- Letting candidates know about your programs and value to the community.
- Responding to requests for information from candidates on a nonpartisan basis.
- Responding to misstatements of fact.

**Rare examples of issue advocacy**

- Rare receives a written request from a congressional committee to testify in Congress about a bill giving social protections to Bantay Dagat, and Rare includes recommendations or a position on the bill in its testimony.
- Rare meets with a national government ministry/agency to discuss implications of a regulation.
- Rare provides recommendations (solicited or unsolicited) on a federal or provincial regulation.
- Rare provides recommendations to a National Development Plan, Nationally Determined Contribution (NOC), Provincial Marine Spatial Plan, Provincial Fisheries Plan, or Municipal Development Plan.
- Rare meets with a member of Congress, a minister, or other government official to discuss the importance of small-scale fisheries to national development or conservation.
- Rare presents to a regional body (like OSPESCA) about the importance of fisher registration. (OSPESCA endorsed a plan to work with Rare but as a regional executive branch body this is not 'legislation:)
- A member of Congress or a ministry official visits a Rare field site.
Procedures for Tracking Lobbying and Advocacy

Rare can engage in lobbying as long as it does not constitute a 'substantial' part of the organization's activities. Section 501(c)(3) of the IRS Code states that "no substantial part" of the activities of a tax-exempt nonprofit can be used for carrying on propaganda or attempting to influence legislation. What is 'substantial' is determined by the IRS on a case-by-case basis and therefore we must track the amount of time and/or money spent on these activities carefully.

Nonprofits that lobby are required to register under the Lobbying Disclosure Act (LDA) if one or more of their employees spend more than 20% of their time on lobbying activities at the federal level. This is why we must track who and how much time is spent on lobbying and keep records of activities that are not considered lobbying but are issue advocacy or expressly excluded from the definition of lobbying.

If you or your team are considering any activities that could be considered lobbying, issue advocacy, or political activity, please contact Paolo Domondon of the Policy and Partnerships Team.

They will provide you a link to a SmartSheet form where Rare staff can log activity when meeting with elected representatives (national or local), agency/ministry staff, legislative committee members and their staff. The form contains these fields:

- Rare Employee Name
- Name of legislator, gov’t official, agency, or committee name
- Activity (short description) (i.e. meeting, committee meeting, public meeting, provide testimony, etc.)
- Time spent (start-end) (total min)
- Topic (short description)
- Request for technical assistance (option to add attachment) (check box)
- Lobbying (check box)
- Not Lobbying (check box)
- Total projected budget including all costs and expenses for activities, staff time, etc.

If the Policy and Partnerships and Finance Teams determine that the activity is lobbying, then they will provide budget codes to move the salary and benefits related to the lobbying off the project budget and on to a particular budget for this purpose.
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<td>What is it?</td>
<td>Influencing Public Opinion</td>
<td>Providing technical advice or assistance to a governmental committee, or a subdivision of either in a response to a written request from that body</td>
<td>Influencing specific legislation</td>
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<td>Influencing candidates and elections</td>
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<td>Reporting to lawmakers about programs help constituents</td>
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<td>● Support or oppose any candidate for public office (international, federal, state, or local)</td>
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<td>● Use of Rare’s resources (staff, volunteers, office space, communications platforms such as a newsletter or Twitter, etc.) to support or oppose a candidate or party</td>
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<td><strong>Rare Examples</strong></td>
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Definitions

Endorse: to declare one's public approval or support of.

Non Partisan: not biased or partisan, especially toward any particular political group

Substantial part: According to 18 USCS § 1093 substantial part means "a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such group is a part.' What is 'substantial' is determined by the IRS on a case-by-case basis and therefore we must track the amount of time and/or money spent on these activities carefully. It is generally accepted that lobbying expenses or activities that represent less than 5 percent of an organization’s overall budget or activities are generally considered to be insubstantial. If the total time and resources spent is less than USD $500,000 then lobbying must be less than 20% of those expenditures.

Sources:
https://www.missionbox.com/article/3991/lobbying-for-us-nonprofits-an-introduction
http://www.nonprofitlawblog.com/nonprofits-international-charity/