

Atlantic States Marine Fisheries Commission

DRAFT RECOMMENDATIONS FOR REVISING THE APPEALS PROCESS

A few members of the Executive Committee (EC) reviewed the Appeals Process. Below you will find recommended revisions to the Appeals Process for the EC to discuss. Recommended additions to the document are highlighted in yellow and deletions are indicated with a ~~strikethrough~~. The revisions to the document are intended to provide greater clarity to the process.

Background

The Atlantic States Marine Fisheries Commission's interstate management process is based on the voluntary commitment and cooperation of the states. The involved states have frequently demonstrated their willingness to compromise and the overall process has proven to be very successful. However, there have been instances where a state/jurisdiction has expressed concern that the Board decisions have not been consistent with language of an FMP, resulted in unforeseen circumstances or impacts, did not follow established processes, or were based on flawed technical information. In order to address these concerns, the ISFMP Policy Board charged the Administrative Oversight Committee with "exploring and further developing an appeals process".

Under the current management process the primary policy development responsibility lies with species management boards. And, in the case of development of new fishery management plans or amendments the full Commission has final approval authority prior to implementation. The purpose of the appeals process is to provide a mechanism for a state/jurisdiction to petition for a management decision to be reconsidered, repealed or altered. The appeals process is intended to only be used in extraordinary circumstances where all other options have been exhausted. The management boards have the ability to go back and correct errors or address additional technical information through the recently clarified process on "amending or rescinding previous board actions".

During the December 2003 ISFMP Policy Board meeting, the decision was made to continue to have the Policy Board serve as the deliberative body that will consider valid appeals. This decision is consistent with the language that is included in the ISFMP Charter. However, the Charter does not provide detailed guidance on how an appeal is to be addressed.

This paper details for the Commission appeals process.

Appeal Criteria –The intent of the appeals process is to provide a state with the opportunity to have a decision made by a species management board or section reconsidered by the Policy Board. The following criteria will be used to guide what type of decisions can be appealed. In general, management measures established through the FMP/amendment/addendum process can be appealed. However, the appellant must use one of the following criteria to justify an appeal:

1. Decision not consistent with, or is contrary to, the stated goal and objectives of the current FMP (Goal and Objective Section of FMPs/Amendments or Statement of the

Problem Section of Addenda).

2. Failure to follow process as identified in the ISFMP Charter, Rules and Regulations or other ASMFC guiding documents (e.g. conservation equivalency guidance).
3. Insufficient/inaccurate/incorrect application of technical information. Examples can include:
 - a. If for any calculations used in the decision, an error which changes the results was identified after the decision was rendered;
 - b. If any data used as the basis for a decision, undergoes a modification which impacts results after the decision was rendered (i.e. a landings dataset is adjusted significantly due to a recalibration or application of a control rule adjustment);
 - c. If data is incorrectly identified and therefore incorrectly applied, such as a misidentification of “landings” information as “catch” information, or incorrectly assigned landings/catch to a jurisdiction;
 - d. If information used as the basis for the decision lacked scientific or statistical rigor, thereby calling in to question the sound basis for the decision;
 - e. If the historical landings, catch, or abundance time series used as a basis for a decision is found to be incorrect.

Any appeal based on criteria 3 may be verified independently by a technical body as appointed by the Chair, as needed.

~~4. Historical landings period not adequately addressed~~

5. Management actions resulting in unforeseen circumstances/impacts that were not considered by the Board as the management document was developed.

The following issues could not be appealed:

1. Management measures established via emergency action
2. Out-of-compliance findings (this can be appealed but, through a separate, established process)
3. Changes to the ISFMP Charter

Appeal Initiation – The ISFMP Charter provides that a state aggrieved by a management board action can appeal to the ISFMP Policy Board. Any state can request to initiate an appeal; also a group of states can submit a unified request for an appeal. The states are represented on the Commission by three representatives that have the responsibility of acting on behalf of the states’ Executive and Legislative branches of government. Therefore, in order to initiate an appeal all seated Commissioners (not proxies) of a state’s caucus must agree that an appeal is warranted and must sign the letter submitted to the Commission. If a multi-state appeal is requested all the Commissioners from the requesting states must sign the letter submitted to the Commission. During meetings where an appeal is discussed proxies will be able to participate in the deliberations. Meeting specific proxies will not be permitted to vote on the final appeal determination, consistent with Commission policy.

A state (or group of states) can request and appeal on behalf of the Potomac River

Fisheries Commission, District of Columbia, National Marine Fisheries Service, or the United States Fish and Wildlife Service.

The letter requesting an appeal will be submitted to the Chair of the Commission and include the measure(s) or issue(s) being appealed, the justification for the appeal, and the commitment to comply with the finding of the Policy Board. This letter must also include a demonstration that all other options to gain relief at the management board level have been exhausted. This letter must be submitted via certified mail at least **45 days** prior to a scheduled ASMFC Meeting Week. The Commission Chair, Vice-Chair and immediate past Chair will determine if the appeal meets the qualifying guidelines and notify the Policy Board of their decision. If the immediate past chair is no longer a commissioner the Chair will select an alternate from a state that is not affected by the appeal.

Convene a “Fact Finding” Committee (optional) -- Upon review of the appeal documentation, the Commission Chair, Vice-Chair and immediate past Chair (or alternate if necessary, as described above) may establish a “Fact Finding” Committee to conduct analyses and/or compile additional information if necessary. This group will be made up of individuals with the technical expertise (including legal, administrative, social, economic, or habitat expertise if necessary) and familiarity with the fishery to conduct the necessary analysis. If such a committee is convened the schedule included in the last section of this document may need to be adjusted to provide time for the Committee to conduct analyses. The Commission Chair, Vice-Chair and immediate past Chair (or alternate if necessary, as described above) may set a deadline for the Committee to complete its work to ensure the appeal is addressed in a timely manner.

ISFMP Policy Board Meeting --Following the determination that an appeal has met the qualifying guidelines, a meeting of the Policy Board will be convened at a scheduled ASMFC meeting week. The agenda of this meeting will be set to allow sufficient time for all necessary presentations and discussions. The Chair of the Commission will serve as the facilitator of the meeting. If the Chair is unable to attend the meeting or would like to more fully participate in the deliberations, the Vice-Chair of the Commission will facilitate the meeting. The ISFMP Director will provide the background on the development of the management program as well as a summary of the justification provided in the record for the management board’s action. The ISFMP Director will also present the potential impacts of the appeal on other affected states. The appellant Commissioners will present their rationale for appealing the decision and provide a suggested solution. The Policy Board will then discuss the presentations and ask any necessary questions. The Board will vote to determine if the management board’s action was justified. A simple majority of the Policy Board is required to forward a recommendation to a management board for corrective action. If the Policy Board determines that the existing management program should be modified, it will issue a finding to that effect as well as any guidance regarding corrective action to the appropriate species management board. The referral may be worded to allow the management board flexibility in determining the details of the corrective action.

Upon receipt of the Policy Board’s recommendation the management board will discuss the findings and make the necessary changes to address the appeal. The management board is obligated to make changes that respond to the findings of the Policy Board. A

simple majority of the management board will be necessary to approve the changes.

Appeal Products and Policy Board Authority – Following the Policy Board meeting a summary of the meeting will be developed. This summary will include a detailed description of the findings and will be forwarded to the appropriate management board and Policy Board upon completion. If the Policy Board determines that changes to the management program are necessary, the summary may include guidance to the management board for corrective action. The report of the Policy Board will be presented to the management board for action at the next scheduled meeting.

Considerations to Prevent Abuse of the Appeals Process – The appeals process is intended to be used only in extraordinary situations and is in no way intended to provide a potential avenue to preempt the established board process. The initiation of an appeal will not delay the Commission process for finding a state out of compliance nor delay or impede the imposition of penalties for delayed compliance.

Limiting Impacts of Appeal Findings – If a state is successful in an appeal and the management program is altered, another state may be negatively impacted by the appeals decision. In order to prevent an appeals “chain reaction,” the Policy Board’s recommendation and the resulting management board’s decision will be binding on all states. All states with an interest in the fishery will be obligated to implement the changes as approved by the management board. Upon completion of the appeals process, a state is not precluded from taking further action beyond the Commission process to seek relief.

If the Policy Board supports the appeal and determines that corrective action is warranted, the potential for management changes to negatively impact other states will be evaluated by the Policy Board and the species management board.

Appeals Process Timeline

1. Within **15 working days** of receipt of a complete appeal request the Commission Chair, Vice-Chair, and immediate past chair (or alternate) will determine if the state has an appeal which meets the qualifying guidelines.
2. Upon a finding that the appeal meets the qualifying guidelines, the appeal will be included on the agenda of the ISFMP Policy Board meeting scheduled during the next ASMFC Meeting Week (provided an adequate time period is available for preparation of the necessary documentation).
3. Following the finding that an appeal meets the qualifying guidelines, Commission staff and the appellant commissioners will have a minimum of **15 working days** to prepare the necessary background documents.
4. The background documents will be distributed at least **15 days** prior to the Policy Board meeting.
5. A summary of the Policy Board meeting will be developed and distributed to all Commissioners within **15 working days** of the conclusion of the meeting.

ATLANTIC STATES MARINE FISHERIES COMMISSION AWARDS COMMITTEE SOPPS

The Commission, through the work of the Awards Committee, annually recognizes outstanding individuals in the field of interstate fisheries management and conservation. The Awards Committee is charged with the important responsibility of soliciting nominations and selecting recipients annually for the Captain David H. Hart Award (Hart) and the Annual Awards of Excellence (AAE).

COMMITTEE COMPOSITION: The Awards Committee is comprised of, at a minimum, an Administrative Commissioner, a Legislative Commissioner, a Governor's Appointee Commissioner, representatives of the Management & Science Committee and the Law Enforcement Committee, and two additional Commissioners. This Committee and its Chair are appointed annually by the Commission Chair.

CHAIRMAN RESPONSIBILITIES: The chair of the Awards Committee is responsible for the following: working with Commission staff to assure issuance of the call for nominations; conducting meetings of the committee; presenting the awards; and assuring dissemination of information about recipients of awards.

COMMITTEE RESPONSIBILITIES: The members of the Awards Committee are responsible for the following: participating in conference calls and meetings; reviewing nomination materials thoroughly and without prejudice; and working collaboratively during deliberations to reach a consensus when deciding which nominees are to be recipients of awards.

WHEN ARE THE AWARDS PRESENTED? The David H. Hart Award is presented at the Commission's Annual Meeting to an individual who has contributed to the betterment of the fisheries of the Atlantic coast through significant biological, legislative, enforcement and/or management activities. The Annual Awards of Excellence are presented at the Commission's Spring Meeting to individuals who have made highly significant contributions to the management and conservation of Atlantic coastal fisheries in one of the following areas: Scientific/Technical/Advisory; Congressional/Legislative; Law Enforcement; Management/Policy and Outreach/Advocacy. Such contributions must be for activities conducted in support of interstate fishery management through the Commission.

WHAT IS THE SELECTION PROCESS? Nominations will be solicited by the Awards Committee in late February (two months prior to the Spring Meeting) for the AAEs and in early – mid June (four months prior to the Annual Meeting) for the Hart Award. The staff member assigned to the Awards Committee will receive the nominations and prepare the package for distribution to the committee. The AAEs will be selected during an Awards Committee conference call in late March – early April. The Hart Award will be selected during an in-person meeting of the Awards Committee at the Summer Meeting of the Commission. If a meeting is not possible at the Summer Meeting a conference call will be held.

CRITERIA: Following is the criteria used to evaluate nominees:

1. Did the individual(s) participate in an activity that had direct positive impact on a species or group of species managed by ASMFC?
2. Did the actions of the individual(s) improve public awareness of ASMFC?
3. Did the actions of the individual(s) improve the credibility of ASMFC?
4. Did the actions of the individual(s) contribute to improved cooperation amongst the stakeholders of ASMFC?
5. Did the individual(s) demonstrate efficient use of time and fiscal resources when conducting the activity described in the nomination?
6. Did the individual(s) exhibit innovation, ingenuity, and creativity when conducting the activity described in the nomination?
7. Did the individual(s) work outside of their routine duties and responsibilities when conducting the activity described in the nomination?
8. Did the individual(s) foster collaboration with others when conducting the activity described in the nomination?
9. Did the individual(s) fundamentally change an approach or method used in the interstate fishery management process?

OTHER: It is preferred that the award recipients remain confidential until the presentations at the meetings. However, the nominator(s) will be notified and can be asked to provide assistance in getting the recipients to the meeting at which they would be presented the award.

Nominees not selected for an award will be considerable eligible for the same award the following year. Nominees not selected during this second year of eligibility must be re-nominated to be considered for an award during future deliberations of the Awards Committee.