NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE PD 30-XXX
January 14, 2014
Administration and Operations
USE OF NATIONAL APPEALS OFFICE
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SUMMARY OF REVISIONS:

Introduction. Each Department of the United States Government handles appeals of administrative decisions. The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (hereafter NOAA Fisheries) has a rich history of providing the public with a forum to question its administrative decisions. NOAA Fisheries regional offices have been at the forefront of the effort. In 2006, Congress amended the Magnuson-Stevens Fishery Conservation and Management Act to require NOAA Fisheries to provide an appeals process for administrative decisions. While providing a forum for appeals was not new, the amendment to the Magnuson-Stevens Act provided an opportunity for NOAA Fisheries to revisit how to process appeals in a budget constrained environment. In response to the Congressional mandate, NOAA Fisheries decided to centralize the appeals process in the Headquarters office.

Using the Headquarters office for processing appeals ensures consistency of process across the agency, supports due process, and enhances efficient use of resources. Regional offices will benefit from these efficiencies. Rather than regional offices expending scarce resources on adjudicating appeals, they can focus on other priorities. At the same time, a sound, consistent, and robust appeals process enables NOAA Fisheries to make corrections and contain costly litigation, enhances the agency's position in potential future litigation, and increases transparency for appellants, the public, and other stakeholders.

Objective. Centralizing a national appeals process at NOAA Fisheries Headquarters will assist regional offices and others within NOAA Fisheries to use resources as efficiently as possible while maintaining core mission areas. To that end, NOAA Fisheries has created a division to adjudicate appeals within the Office of Management and Budget known as the National Appeals Office or NAO. To support this new division, this directive outlines some of the key functions which will support operations.

Authorities and Responsibilities. This policy directive does not diminish the authority of the Assistant Administrator and Regional Administrator to determine the final agency decision for fishery management programs. Consistent with NOAA Fisheries regulations and policy, a Regional Administrator may affirm, remand, reverse, or modify NAO's decision.

All divisions or offices generating any new fishery management programs or revisions to programs requiring an appeals process, must notify NAO of the program in advance of the development of draft regulations governing the program. This benefits regions by promoting the prompt processing of appeals.

Future catch share appeals, including those for programs under development, must be routed through NAO. NAO is also available to service appeals for catch share programs currently in existence. To facilitate the use of NAO, divisions and offices should notify NAO as soon as possible if they anticipate the need for an appeals process for catch share programs that currently exist. NAO will work with the requesting office to jointly determine whether NAO will adjudicate appeals for existing catch share programs.

Additionally, an office may request NAO handle its non-catch share appeals. NAO will work with the requesting office to jointly determine whether NAO will adjudicate appeals for a non-catch share program.

To ensure consistency across NOAA Fisheries, the processing of all appeals adjudicated by NAO will be governed by NAO policy and regulations.

Measuring Effectiveness. NAO is under the direction of the Director of Management and Budget which will take steps to measure the soundness and effectiveness of NAO's processes. NOAA Fisheries Deputy Assistant Administrator for Operations will periodically assess compliance with this policy, and implement remedial actions in cooperation with the Regional Administrators and other appropriate personnel if necessary.

This policy will be changed as circumstances dictate, using the policy directives process.

References. This policy directive is supported by the frequently asked questions and contact information listed in Attachment 1.

Signed 1/24/14
Samuel D. Rauch III Date:
Deputy Assistant Administrator
for Regulatory Programs,
performing the functions and duties of the
Assistant Administrator for Fisheries

ATTACHMENT 1

1. Contact information.

2. Frequently Asked Questions (FAQs).

CONTACT INFORMATION

Notification about future draft regulations involving programs for which an appeals process is needed should be directed to the Chief of NAO.

FREQUENTLY ASKED QUESTIONS (FAQs)

Q1. May a Regional Administrator reject a NAO decision?

A. Yes. After NAO issues its decision, the Regional Administrator may affirm, remand, reverse, or modify NAO's decision.

Q2. How long does a Regional Administrator have to adopt, remand, reverse, or modify NAO decisions?

A. Regional Administrators should check with General Counsel for further guidance on time frames consistent with due process principles.

Q3. Which appeals go to NAO?

A. All future catch share appeals. NAO must be referred to as adjudicator in all proposed regulations involving a program or change in a program for which a future catch shares appeals process is required or desirable. Additionally, an office may request NAO handle non-catch shares appeals. For details on NAO handling your non-catch share appeals please contact the Chief of NAO. Suggested language to insert in your regulations: "Any appeal under [this program, this rule] will be processed by the NOAA Fisheries National Appeals Office. Appeals will be governed by the regulations and policy of the National Appeals Office." Once the final procedural rule is published, the placeholder should include a Code of Federal Regulation citation to NAO's procedural rules.

Q4. Will NAO handle the appeals of programs already in existence and which already have appeals processes outlined in the Code of Federal Regulations?

A. NAO may adjudicate appeals from catch share programs currently in existence. NAO will work with an office requesting its services to jointly determine whether NAO will adjudicate those appeals. For details, please contact the Chief of NAO.

Q5. May a regional office provide an appeal process *before* any appeal to NAO?

A. No. The NOAA Fisheries decided a national, central office would process appeals. Effective the date of Policy Directive 30-xxx, regional offices may not provide such a process for catch share appeals. This Policy Directive, however, does not preclude a regional office from requesting or receiving additional information from an applicant after issuing an initial notice but prior to issuing its initial administrative determination.

Q6. May a regional office limit the scope of issues that can be appealed to NAO?

A. No. For catch share appeals, a regional office may not limit the scope of what is appealable to NAO. A broad and robust appeals process will provide appellants with an informal forum with standardized procedures to resolve disputes, and will avoid costly litigation. For non-catch share appeals, a regional office should work with the Chief of NAO to determine the appropriate scope of the appeal.

Q7. Must a regional office participate in an appeal?

A. No. A regional office does not have to participate in an appeal. However, a regional office may choose to opt in as a party and participate in the appeal.

Q8. Will NAO hold a hearing for every appeal?

A. No. Hearings will be held if oral testimony is required. On a case-by-case basis, hearings may be held for other reasons. NAO is service-oriented and will try to respond to requests for hearings from a region as expeditiously as possible.

Q9. Will hearings be held in person?

A. NAO appeal hearings may be held by telephone, video conference, or other electronic means. In some circumstances, in-person hearings may be held. If you want NAO to hold in-person hearings for your program, contact NAO as early in the process as possible.

Q10. Can NAO decisions not be titled decisions but rather tentative decisions or recommendations?

A. No. NAO is separate and distinct from the office issuing the initial administrative determination. NAO will make clear in the beginning of each decision that the Regional Administrator may affirm, remand, reverse, or modify NAO's decision.

Q11. Can I see NAO decisions?

A. Yes. All appeal decisions are public record and will be published on a NMFS webpage consistent with the Privacy Act and all applicable law: http://www.nmfs.noaa.gov/mb/appeals/mb7.htm. NMFS may publish redacted versions of these decisions to prevent release of personal identifiable information, medical, and other non-disclosable information.

Q12. May offices at Headquarters use NAO for appeals services?

A. Yes. Headquarters offices may use NAO for appeals services. For details, please contact the Chief of NAO.

Q13. What do I do if I receive a letter from a member of Congress about a constituent's appeal?

A. NOAA Fisheries Policy Directives address the procedures for handling a letter from a member of Congress about a constituent's appeal. Please refer to Policy Directives 31-105 and 31-105-1 which outline standard procedures for handling controlled correspondence. NOAA Fisheries staff should follow these procedures.

Q14. What do I do if I receive a request for copies of documents related to an appeal?

A. Policy Directives 30-125 and 30-125-1 outline standard procedures for handling Freedom of Information Act (FOIA) requests. NOAA Fisheries staff should follow these procedures. Requests for copies of documents from parties to an appeal or NOAA Fisheries staff should be forwarded to Chief of NAO .

Q15. What do I do if the media asks about an appeal or NAO?

A. Refer the reporter to your public affairs officer as outlined in Department Administrative Order (DAO) 219-1 for all public communication, including communications with media. In addition, NOAA Fisheries staff should notify NAO of media requests for information.

Q16. Who pays for catch share appeals processes?

A. Financial Management Centers do not have to pay for catch share appeals processes. However, it is negotiable whether they will reimburse NAO for other appeals processes. "Catch share" is a general term which includes Limited Access Privilege Programs and Individual Fishing Quotas.

Q17. Does NAO settle cases?

A. NAO does not currently settle appeals. However, settlement may be appropriate in the future.

Q18. Will NAO provide a copy of the case record to the relevant Regional Administrator or similar official?

A. Yes. NAO will provide a copy of its case record to the Regional Administrator.