

Advisory Panel Membership & Fishing Violation Policy

2010 SOPPs

The following excerpt was taken from the 2010 SOPPs: “Persons are ineligible for membership and are automatically removed from an AP if that person has been convicted of any felony offense or is determined by NOAA's Office of Law Enforcement or have violated any federal or state marine resource law or regulations within the previous five years. ‘Determined to have violated’ includes but is not limited to final administrative decisions of NOAA, or any other final assignment of guilt, responsibility, or liability for a violation, including but not limited to settlement agreements, final orders, or any other final agency action assigning liability for a violation. For purposes of this policy, such marine resource violations are those regulating harvest and reporting.”

During a closed Council session in April 2011 it was decided to change the guidance for AP appointments and de-emphasize the violation aspect because Council staff had determined that the process for conducting background checks with both NOAA and the States was challenging because it was difficult to get comparable reports from each State.

2012 SOPPs

Below is the modified excerpt the Council has followed since 2012 that replaced the older guidance on AP membership criteria related to fishing violations: “Membership on an AP is determined by the Council during a closed session of its Council meetings and is based on the application provided by the applicant as well as the Council members’ knowledge of the applicant. Consideration for appointment may include the appropriate interest, experience, and past performance as well as other factors such as a record of fishery violations. AP members serve at the pleasure of the Council and may be removed at any time without cause.”

In 2014, the Council removed an AP member due to a fishery violation and decided to reinstate background checks through NOAA Law Enforcement. The NOAA background checks do not include State agency citations.

Sometime in the 1980’s the Council decided to not hold boat owners responsible for violations made by a vessel captain in the above AP appointment process but this decision was never codified in the SOPPs. At the June, 2015 Council meeting during a closed session the Council decided to hold boat owners responsible for crew violations and did not appoint and removed current AP members whose captain had a violation. Some of those boat owners have inquired as to how long they must wait before they can be considered for an appointment.

Council Clarification Requested by Staff

Staff is requesting clarification on the following aspects of this policy.

1. Should boat owners be held responsible for violations by a crew when the owner is not present?
2. What historical time frame is appropriate for consideration of a violation in an AP appointment?
 - a. Should the time frame include only the date of the initial violation, the date of the Notice of Violation and Assessment (which can be 4 years later), or the actual settlement date?
3. Should we conduct background checks for violations by AP applicants and current members with State marine agencies in addition to NOAA?