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Limited Access Management of Federal Fisheries In and Off of Alaska; Determinations and Appeals; Individual Fishing Quota Program

AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule
adopting as final without change two
interim rules that amended regulations
implementing the Individual Fishing
Quota (IFQ) Program for Pacific halibut
and sablefish fixed gear fisheries in and
off of Alaska.

EFFECTIVE DATE: This rule is effective
November 30, 1995.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

Background

The IFQ Program is a regulatory
regime developed by the North Pacific
Fishery Management Council (Council)
to promote the conservation and
management of Pacific halibut
(*Hippoglossus stenolepis*) and sablefish
(*Anoplopoma fimbria*) stocks in Federal
waters in and off of Alaska. The IFQ
Program limits access to Pacific halibut
and sablefish fixed gear fisheries
through the annual issuance of IFQ.
Holders of IFQ may harvest their IFQ,
specific to species, vessel category, and
regulatory area, any time during the IFQ
fishing season. Further information
about the IFQ Program is contained in
the preamble to the final implementing
regulations published at 58 FR 59375,
November 9, 1993, and subsequent
amendments.

This action makes final several
changes to the IFQ implementing
regulations that were originally effected
by interim rules. One interim rule
reduced the two-stage appeals
procedures to a single-step process,
shortened the length of time required for
certain appeals-related actions, and
established a quota shares (QS) reserve
to permit the deferred allocation of IFQ

for qualified persons whose QS are in
dispute at the time of annual IFQ
allocation. The other interim rule
allowed vessels subject to existing IFQ
Program recordkeeping and observer
coverage requirements to fish for IFQ
species in regulatory areas for which
persons aboard a vessel hold IFQ less
than the total amount of IFQ species on
board. These changes are described
below.

Changes to the Determinations and Appeals Procedures

Final rules implementing the appeals
procedure for limited access
management of Federal fisheries in and
off of Alaska became effective July 1,
1994 (59 FR 28281, June 1, 1994). A
detailed explanation of the procedure
for appealing initial administrative
determinations appeared in the
preamble of the notice of proposed
rulemaking published at 59 FR 5979 on
February 9, 1994. NMFS identified three
changes to the final rules as necessary
to improve the efficiency of the appeals
process. An interim rule published at 60
FR 6448, February 2, 1995, effected
these changes, as follows.

1. The first change eliminated
applicants' right to appeal an appellate
officer's decision to the Director, Alaska
Region, NMFS (Regional Director), but
retained the Regional Director's
discretionary authority to renew,
modify, reverse, or remand any such
decision. This effectively changed the
original two-stage appeals procedure to
a single-step process. The original
procedure provided an applicant a first-
stage opportunity to appeal an initial
administrative determination to an
appellate officer and a second-stage
opportunity to appeal the appellate
officer's decision to the Regional
Director. This interim rule eliminated
the second-stage appeal; however, the
Regional Director routinely reviews
appellate officers' decisions and may
reverse, modify, or remand those
decisions for further consideration. The
appellate officer's decision, unless acted
on by the Regional Director, becomes
the final agency action for purposes of
judicial review 30 days after issuance.

2. The second change substantially
reduced the time period within which
an appellant may file an appeal from 90
Federal business days to 60 calendar
days after the date of the initial
administrative determination. The
original appeals filing period consisted
of 90 days, not including weekends and
holidays. The revised appeals filing
period consists of 60 calendar days
unless the last day falls on a weekend
or holiday. The original appeals filing
period was intended to provide an

appellant with a liberal period within
which to prepare an appeal. NMFS
determined that this period was
unnecessarily long and would
exacerbate expected delays in the
resolution of appeals. Disputes in which
two or more applicants make claims to
the same vessel or catch data should be
resolved at the same time. Without this
change, one claimant could file a
prompt appeal while another could
delay filing for up to 4 months, thereby
preventing the prompt issuance of
disputed IFQ to the rightful party. The
revised period provides appellants with
adequate time to prepare and file
appeals, and benefits all affected parties
by accelerating the appeals process.

3. The third change shortened the
period of delayed effectiveness of an
appellate officer's decision from 45
Federal business days to 30 calendar
days after the date the decision is
issued, unless, prior to that time, the
Regional Director modifies the decision,
issues an order staying the effectiveness
of the decision pending review, or
accelerates the effectiveness date. This
change also accelerated the agency's
final actions on appeals. NMFS
determined that 30 calendar days are
adequate for the Regional Director to
review an appellate officer's decision
and take any necessary action, such as
a stay.

These changes implemented by the
interim rule help to expedite the
appeals process, which benefits the
fishermen involved.

Changes to the Establishment of QS Pools

Regulations pertaining to the
calculation of QS and the QS pool for
an area are found at § 676.20. The
interim rule at 60 FR 6448, February 2,
1995, also amended § 676.20(d)(3) to
establish a reserve within the QS pool
of each IFQ regulatory area. Without
such a reserve, contested catch history
would not be included in the pool, and
persons without QS included in the QS
pool on January 31 of any year, when
annual allocations of IFQ are
determined, would be unable to
participate in the IFQ fisheries in that
year.

A problem of particular concern in
the initial year of the IFQ Program was
that numerous appeals involved
disputes over who owned or leased a
vessel that made qualified landings but
not over the amount of those landings.
Many of these appeals were not resolved
by January 31, 1995. Failure to establish
a reserve within the QS pool could have
prevented the prevailing party from
receiving and using IFQ during the IFQ