

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 regulatory amendment eliminates the second stage appeal; however, the Regional Director will routinely review appellate officers' decisions, and may reverse, modify, or remand these decisions for further consideration. If the appellate officer's decision is modified or reversed, the Regional Director will issue a written decision explaining the reasons for this action. The appellate officer's decision, unless acted on by the Regional Director, will be the final agency action for purposes of judicial review 30 days after issuance.

The second change is a substantial reduction of the time period within which an appellant may file an appeal. The purpose of this change is to expedite the appeals process, as explained above. The time period within which an appellant may file a written appeal of an initial administrative determination is changed from 90 Federal business days to 60 calendar days after the date the determination is made. This change effectively reduces the appeal filing opportunity from about 4 months to about 2 months. Saturdays, Sundays, and Federal holidays would be counted as part of the 60-day time period unless the last day of the 60-day period falls on a Saturday, Sunday, or Federal holiday. In this event, the period is extended to the close of business on the next business day.

The original appeals filing period of 90 days, not including weekends and holidays, was intended to provide an appellant with a liberal period within which to prepare an appeal. NOAA has determined that this period is unnecessarily long and would exacerbate expected delay in the resolution of appeals. Resolution of disputes involving more than one applicant but possibly the same vessel or catch data could be facilitated by resolving related appeals at the same time. Without this change, one person could file a prompt appeal while another could delay filing for up to 4 months, thereby preventing the prompt issuance of disputed IFQ. A 60-day period, including weekends and holidays except on the last day of the period, would provide appellants with adequate time to prepare and file appeals, and would benefit all affected parties by accelerating the appeals process.

The third change is a shortening of the period of delayed effectiveness of an appellate officer's decision from 45

Federal business days to 30 calendar days. The purpose of this change also is to speed achievement of final agency action on appeals. A 30-calendar-day period is adequate for the Regional Director to review an appellate officer's decision and take any action deemed necessary, such as a stay. Unless acted on by the Regional Director, an appellate officer's decision will be the final agency action subject to judicial review at the end of the 30-calendar-day delayed effectiveness period.

Changes to the Establishment of Quota Share Pools

Regulations pertaining to the calculation of QS and the QS pool for an area and regulations for appealing initial administrative determinations made regarding those calculations are found at 50 CFR 676.20 and 676.25, respectively. This action changes § 676.20(d)(3) to establish a reserve within the QS pool of each IFQ regulatory area; otherwise, contested catch history would not have been included in the QS pool. Any person who does not have QS included in the QS pool on January 31 of any year will not be allocated IFQ for that year and will not be able to participate in the IFQ fisheries in that year.

A problem of particular concern in the initial year of the IFQ program is that numerous appeals involve multiple parties. There may be disputes, for example, over who owned or leased a vessel that made qualified landings but not over the amount of those landings. Resolution of such appeals during the 1995 IFQ fishing season for halibut and sablefish would not allow the prevailing party to receive IFQ and use it during the season.

To correct this problem a QS pool reserve is established for catch history that would otherwise be withheld from the QS pool due to the pendency, at the time IFQ is determined, of an appeal involving contested catch history, vessel ownership or vessel lease data by two or more QS applicants. NMFS will set aside QS in the reserve pool for eventual award to specific appellants, and will include this QS in the total QS pool for purposes of determining the amount of IFQ to be assigned to each holder of QS.

This action addresses the problem that appeals, which involve multi-party contests over verified fish landings during the base period, could unjustly result in failure to allocate IFQ for the 1995 fishing season to applicants having made timely and sufficient application for participation in the IFQ Program. This procedure (i.e., placing contested QS in a reserve) is for use only in situations in which the eligibility for

qualifying pounds has been established but the appropriate party to be issued the QS, and the resulting IFQ, is pending decision.

Appeals may involve disputes between the appellant and NMFS over the amount of catch history that should be counted for purposes of calculating QS or may involve disputes between two or more persons over who should be assigned QS that results from catch history, vessel ownership, or lease history. Although any appeal would prevent NMFS from issuing contested QS, the agency could calculate the approximate amount of QS that would be added to the QS pool before an appeal involving two or more persons is resolved if the amount of catch history is not the issue being appealed but rather the issue is who should receive the QS that results from the catch history. In such cases, the undisputed catch history could be placed in a reserve as part of the QS pool for IFQ calculation purposes but no QS or IFQ would be assigned until after the agency determines the appropriate person or entity to receive the QS. The purpose of such a reserve is to provide for an immediate assignment of QS and IFQ upon final agency action on such multi-party appeals. This would allow the person receiving such IFQ to begin using it to harvest halibut or sablefish during the remainder of the IFQ fishing season following the decision. Alternatively, IFQ stemming from such disputed QS would not be issued until the year following final agency action.

Waiver of Notice and Comment and Delayed Effectiveness Period

This action must be made effective immediately for its benefits to be realized by the public. Pursuant to 5 U.S.C. 553(b)(B), a rule may be issued without prior notice and opportunity for public comment if providing such would be impracticable, unnecessary, or contrary to the public interest. Pursuant to 5 U.S.C. 553(d)(3), a rule may be made effective prior to 30 days after its issuance for good cause found and published with the rule.

As explained earlier, both the two-tiered appeals process and the excessively long period in which an appeal may be filed under the current system cause unnecessary delays. These delays are harmful to the public, because they delay the opportunity for a successful appellant to use any fishing privileges resulting from an appeal. Delaying promulgation of this rule to allow for prior notice and opportunity for public comment and delaying its effective date for 30 days would be contrary to the public interest in that the