

EXECUTIVE SUMMARY

In August of 2005, fishing in the Bering Sea and Aleutian Island crab fisheries began under a new share-based management program (the “program”). The program is unique in several ways, including the allocation of annual individual processing quota (IPQ) with a one-to-one correspondence to a specific portion of the annual individual fishing quota (IFQ) pool – “Class A IFQ”. Use of either these IPQ or “Class A IFQ” requires matching with the other share type, on a pound for pound basis. To ensure applicants have adequate due process opportunity to contest any finding concerning qualification for an allocation, at the time of annual issuance of IFQ and IPQ, NOAA Fisheries sets aside quota (either IFQ or IPQ, as the case may be) in an amount needed to cover any possible claim of an applicant, should the final determination favor the applicant. As a result, any application disputes not finalized at the time of the allocation of IFQ and IPQ have the potential to strand quota of the other share type, in the event the applicant does not appeal or does not prevail on appeal (since the withheld quota cannot reasonably be issued to other qualified applicants). Moving the application deadline from August 1st to June 15th may allow additional time to finalize some appeal filings and proceedings, thereby reducing the potential for quota stranding.

Purpose and Need Statement

The Council has adopted the following purpose and need statement for these actions:

Under the crab rationalization program, QS holders and PQS holders must annually apply for allocations of IFQ and IPQ, respectively. In some instances, filing of these applications has been disputed creating uncertainties concerning the one-to-one relationship between Class A IFQ and IPQ, which is critical to parties use of those shares. Moving the application deadline to an earlier date for IFQ and IPQ could allow for additional time to resolve any disputes concerning the timeliness and adequacy of applications by NOAA Fisheries; and thereby, prevent some potential mismatches of the issued Class A IFQ pool and IPQ pools.

Alternatives

The status quo filing deadline for annual cooperative, IFQ and IPQ applications is August 1st. Persons denied an allocation under an initial administrative determination (IAD) are permitted 60 days to appeal that decision. A single action alternative, which would move the deadline for these annual applications to June 15th, is being considered. In addition, the action alternative would shorten the time to appeal an initial administrative determination to withhold quota to 30 days.¹ In addition, current regulations would be modified to stipulate that proof of timely filing of an application for IFQ or IPQ would create a presumption that such a timely filing was made.

Effects of the alternatives

Under the status quo, the cooperative, IFQ, and IPQ application deadlines will remain August 1st. This deadline leaves little time for administrators to resolve any disputes concerning qualification of QS holders or PQS holders for IFQ and IPQ, respectively. Since administrators are compelled to reserve IFQ and IPQ sufficient to satisfy any disputes, unallocated shares in either sector can strand not only the unissued shares, but also a matching amount of shares from the opposing sector. For example, unissued Class A IFQ will result in an equivalent amount of issued IPQ being unusable. Under the status quo, persons have 60 days to appeal any decision of the agency to withhold IFQ or IPQ. This time period (although standard for most administrative appeals) also contributes to the stranding of quota, as it extends until early October, when IFQ and IPQ are issued in most fisheries.

¹ It should be noted that transfers of QS and PQS are not permitted from the application deadline until the issuance of IFQ and IPQ. This halt on transfers is needed, in part, to ensure that issuances are made in accordance with rules against the issuance of Class B IFQ to persons who have affiliations to IPQ holders.

Under the action alternative, the deadline for cooperative, IFQ, and IPQ applications would be moved to June 15th. This deadline allows substantially more time for resolution of administrative findings that might deny allocations of IFQ or IPQ. Finalization of those decisions will aid in reducing the amount of stranded quota arising from set asides to ensure quota are available to satisfy possible claims. An ancillary benefit of the earlier deadline is that the June 15th deadline falls during a period that is less busy for participants in the fishery, as a portion of the harvester sector also participates in summer salmon fisheries. The action alternative would also reduce the time to appeal decisions to withhold IFQ and IPQ allocations to 30 days (from 60 days). This reduction in time to appeal will obviously allow less time for a person to initiate an appeal of an administrative decision, but is not believed to be unfairly constraining, especially in light of the efforts of administrators to ensure that participants receive notice of application deadlines and typically attempt to locate persons failing to apply to ensure that failure is intentional. The shorter appeal period is intended to reduce the portions of the IFQ and IPQ pools that must be reserved by ensuring that administrators know which QS and PQS holders are disputing a denial and, possibly, allowing for the resolution of some appeals before or early in the season. The action alternative also creates an explicit regulatory presumption of timely filing by persons who maintain proof of that filing. This regulation would serve to stress for participants that proof of filing should be maintained. Although this regulatory modification is unlikely to change the outcome of any disputed filing (as even without the modification an applicant's proof of filing is likely to be determinative), the modification may serve as a reminder to applicants to protect their interests by retaining proof of filing.