

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver *Chris*
Executive Director
DATE: March 23, 2011
SUBJECT: Crab management

ESTIMATED TIME 8 HOURS (ALL C-4 ITEMS)
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ACTION REQUIRED

(a) Final action on change of IFQ/IPQ Application Deadline.

BACKGROUND

Under the crab program, annually issued individual processing quota (IPQ) have a one-to-one correspondence with a specific portion of the annually issued 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). This action would move the application deadline from August 1st to June 15th to allow additional time to finalize some appeal filings and proceedings, thereby reducing the potential for stranded quota. In addition, the action would shorten the time to appeal initial administrative decisions denying a QS holder or PQS holder an allocation of IFQ or IPQ, respectively, from 60 days to 30 days. This shorter time for appeal could also result in more final administrative decisions, further reducing the potential for stranded quota. Lastly, the action would also modify the current regulations to provide that an IFQ or IPQ applicant’s proof of timely filing of an application would create a presumption that the filing was made. This regulation could serve a few purposes. First, applicants who keep records of filing would effectively resolve any dispute prior to an administrative finding that an application was not filed. Adopting a practice of maintaining records of filings would certainly aid applicants should NOAA Fisheries dispute the timely filing of an application. Secondly, resolution of initial administrative decisions on appeal could be streamlined. If the Office of Administrative Appeals relies on such a rule for any finding related to cases in which IFQ and IPQ applicants allegedly failed to apply for annual allocations, appellate determinations would be relatively certain. A copy of the executive summary of the analysis is attached as Item C-4(a)(1).