

Fishery Conservation and Management

§ 600.630

part 904, subpart C (or as subsequently amended), apply to the proceeding after its commencement by service of notice (pursuant to § 600.615) and prior to the Secretary's decision (§ 600.625), except that the following sections will not apply:

(1) 15 CFR 904.201 (Definitions);
(2) 15 CFR 904.206(a)(1) (Duties and powers of Judge); and

(3) 15 CFR 904.272 (Administrative review of decision).

(b) *Additional duties and powers of judge*—(1) *Time periods*. The administrative law judge is authorized to modify all time periods pertaining to the course of the hearing (under §§ 600.615 and 600.620) to expedite the proceedings, upon application and appropriate showing of need or emergency circumstances by a party.

(2) *Intervention*. Intervention by persons not parties is not allowed.

§ 600.625 Secretary's decision.

(a) The Secretary will, on the basis of the hearing, record the administrative law judge's recommended decision:

(1) Accept or reject any of the findings or conclusions of the administrative law judge and decide whether the factual findings exist for Federal preemption of a state's authority within its boundaries (other than in its internal waters) with respect to the fishery in question;

(2) Reserve decision on the merits or withdraw the notice of proposed preemption; or

(3) Remand the case to the administrative law judge for further proceedings as may be appropriate, along with a statement of reasons for the remand.

(b) *Notification*. (1) If the factual findings for Federal preemption are determined to exist, the Secretary will notify in writing the Attorney General of that state and the appropriate Council(s) of the preemption of that state's authority. The Secretary will also direct the Administrator to promulgate appropriate regulations proposed under § 600.615(d) and otherwise to begin regulating the fishery within the state's boundaries (other than in its internal waters).

(2) If the factual findings for Federal preemption are determined not to

exist, the Secretary will notify, in writing, the Attorney General of the state and the appropriate Council(s) of that determination. The Secretary will also direct the Administrator to issue a notice withdrawing any regulations proposed under § 600.615(d).

§ 600.630 Application for reinstatement of state authority.

(a) *Application or notice*. (1) At any time after the promulgation of regulations under § 600.625(b)(1) to regulate a fishery within a state's boundaries, the affected state may apply to the Secretary for reinstatement of state authority. The Secretary may also serve upon such state a notice of intent to terminate such Federal regulation. A state's application must include a clear and concise statement of:

(i) The action taken by the State to correct the action or omission found to have substantially and adversely affected the carrying out of the FMP; or

(ii) Any changed circumstances that affect the relationship of the state's action or omission to take action to the carrying out of the FMP (including any amendment to such plan); and

(iii) Any laws, regulations, or other materials that the state believes support the application.

(2) Any such application received by the Secretary or notice issued to the State will be published in the FEDERAL REGISTER.

(b) *Informal response*. The Secretary has sole discretion to accept or reject the application or response. If the Secretary accepts the application or rejects any responses and finds that the reasons for regulation of the fishery within the boundaries of the state no longer prevail, the Secretary will promptly terminate such regulation and publish in the FEDERAL REGISTER any regulatory amendments necessary to accomplish that end.

(c) *Hearing*. The Secretary has sole discretion to direct the Administrator to schedule hearings for the receipt of evidence by an administrative law judge. Hearings before the administrative law judge to receive such evidence will be conducted in accordance with § 600.620. Upon conclusion of such hearings, the administrative law judge will certify the record and a recommended