geographic coordinates of the Grand Forks International Airport ILS Localizer, and removes NOTAM information, in the regulatory text of a final rule that was published in the **Federal Register** of December 10, 2013, amending Class D and Class E airspace in the Grand Forks, ND area.

DATES: *Effective Date:* 0901 UTC, February 6, 2013.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 10, 2013, the FAA published in the **Federal Register** a final rule amending Class D and Class E airspace in the Grand Forks, ND area. (78 FR 74005, Docket No. FAA–2013–0950). Subsequent to publication, an error was discovered in the latitude coordinates for Grand Forks International Airport listed in the Class D airspace description, as well as the NOTAM information inadvertently copied in error for Grand Forks AFB. In addition, reference to the Grand Forks International Airport ILS localizer navigation aid was omitted from the descriptor for the Grand Forks, ND, Class E airspace.

Class D and Class E airspace designations are published in paragraph 5000 and 6005, respectively, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR Part 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Class D airspace areas at Grand Forks International Airport, Grand Forks, ND, and Grand Forks AFB, ND, and the Class E airspace area extending upward from 700 feet above the surface at Grand Forks International Airport, Grand Forks, ND, as published in the **Federal Register** December 10, 2013 (78 FR 74005), (FR Doc. 2013–29222) FAA Docket No. 2013–0950, are corrected as follows:

AGL ND D Grand Forks, ND [Corrected]

Grand Forks International Airport, ND

■ On page 74006, column 1, line 29 of the regulatory text, remove 'lat. 47°5′50″ N.,' and insert 'lat. 47°56′50″ N.'

AGL ND D Grand Forks AFB, ND [Corrected]

■ On page 74006, column 1, and beginning on line 51, remove the following:

This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will therefore be continuously published in the Airport/Facility Directory.

AGL ND E5 Grand Forks, ND [Corrected]

■ On page 74006, column 2, add the following after line 46:

Grand Forks International Airport ILS Localizer
(Lat. 47°53′43″ N., long. 97°10′52″ W.)

Issued in Washington, DC, on February 3, 2014.

Mark W. Bury,

Assistant Chief Counsel, International Law, Legislation, and Rulemaking.

[FR Doc. 2014–02563 Filed 2–3–14; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 906

[Docket No. 101019524–3999–02]

RIN 0648–BA36

National Appeals Office Rules of Procedure

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

ACTION: Final rule.

SUMMARY: With this final rule, NMFS implements procedural regulations governing the National Appeals Office (NAO), a division of NMFS Office of Management and Budget within NOAA. NAO's central mission is to provide an efficient means of adjudicating appeals by providing due process and consistency to NMFS administrative decisions, particularly those involving Limited Access Privilege Programs (LAPPs) established pursuant to Section 303A of the Magnuson-Stevens Fishery Conservation and Management Act. The procedures contained herein could also be used to adjudicate appeals from other offices that incorporate these rules into their regulations or otherwise notify potential appellants of the procedures' applicability to their proceedings.

DATES: This final rule is effective March 10, 2014.

FOR FURTHER INFORMATION CONTACT: Steven Goodman, National Appeals Office, Office of Management & Budget, NMFS, 1315 East-West Hwy., Room 10843, Silver Spring, MD 20910; *nmfs.nao.contact@noaa.gov;* (301) 427–8774. (This is not a toll-free number.) Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) authorizes LAPPs and requires NMFS to ''include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges.'' To fulfill that requirement, NMFS is adopting this final rule at 15 CFR part 906, which would designate NAO, a division within NMFS Office of Management and Budget, as adjudicator for appeals in future LAPPs established under section 303A of the MSA.

NAO adjudicates initial administrative determinations, agency actions that directly and adversely affect an appellant. Although not exclusively, NAO proceedings are for appeals of denials of permits or other limited access privileges. Typically, NAO will be used for informal administrative appeals.

This final rule addresses operations as well as events that occur during the course of adjudicating an appeal filed with NAO. NAO will produce written decisions upholding or reversing the initial administrative determination under review. Under this final rule, a decision issued by NAO becomes final after a NMFS Regional Administrator has had the opportunity to review NAO's decision. A Regional Administrator may adopt, reverse, remand, or modify NAO decisions.

Additional background information on this final rule is found in the preamble to the proposed rule published on June 8, 2012 (77 FR 33980), and is not repeated herein. The proposed rule solicited public comments; the comments and NMFS' responses are identified below.

Comments and Responses

The proposed rule solicited public comments through July 9, 2012. During the comment period, NMFS received comments from five individuals and two entities. The two entities are the Public Employees for Environmental Responsibility and the Alaska Commercial Fisheries Entry Commission. Some persons and entities made multiple comments in one document. The specific comments and our responses are as follows.

Comment 1: One entity recommends a different description for preponderance of the evidence as it relates to the burden of proof on issues of fact.

Response: NMFS revised the definition of ''preponderance of the evidence'' by deleting ''reasonable person'' and modifying the reference to a contested fact being ''more likely than not'' to ''more likely to be true than not true.'' The revised definition maintains an objective standard and does not substantively change the burden of proof. Although federal agencies appear to use various definitions of ''preponderance of the evidence,'' the definitions are generally consistent in their meaning, and the definition set out in the final rule is used by a number of other federal agencies.

Comment 2: One individual would like a different definition of ''Initial Administrative Determination'' or ''IAD.'' The individual believes the proposed definition is too limited, and recommends NMFS adopt the definition found in The Design and Use of Limited Access Privilege Programs, a Technical Memorandum NOAA published in 2007. In the Memorandum, an IAD is identified as: ''[A] formal decision on an applicant's claims that identifies the applicant, the program, and the claim. The IAD contains a background section that summarizes the proceedings to date and then discusses the claim in light of information in the Official Record and the requirements of the regulations. The formal denial is then set out and the applicant is informed of her/his right to appeal.''

Response: The commentator's definition was written specifically for limited access privilege programs. NMFS chose a broad definition in the Proposed Rule to capture all possible types of decisions over which it may assume jurisdiction. NMFS requires the flexibility to use NAO to process appeals from decisions not associated with limited access privilege programs.

Comment 3: One entity states that if an appellant fails to meet a deadline, the appellant should be able to file for an extension to the deadline to file. The entity also states allowing appellants to file after a deadline has past is consistent with the Federal Rules of Civil Procedure. An individual stated a deadline should be stayed while a request for extension is pending.

Response: In response to the comment, NMFS revised § 906.4(d) to state that one thirty day extension may be granted if an appellate officer determines a party has established good cause for an extension of time, taking into account whether the party timely requested the extension or the extent to which the party missed the deadline. A person may not request an extension of time to file a petition to appeal. The Federal Rules of Civil Procedure do not apply to administrative appeals.

Comment 4: One entity and three individuals believe it is unfair to require an appellant to raise the arguments in support of his or her appeal in the petition. They believe appellants may be unsophisticated and therefore should be able to add new arguments at any stage of the appeals proceeding. One individual thinks an appellant should have thirty days to amend his or her petition, based on the model in the federal regulations at 15 CFR part 904 et seq.

Response: In response to public comments, NMFS has revised the rule to permit amendments to the petition based on good cause for not raising the arguments in the original petition. The federal regulations at 15 CFR part 904 et seq. apply to law enforcement proceedings. Although NMFS took them into consideration, NMFS believes the final rule is more appropriate for appeals of limited access privileges and other decisions.

Comment 5: Three individuals recommend NMFS accept filing of appeals by electronic method. Two individuals believe an appellant should be able to file by mail or commercial carrier regardless if they have a fax machine.

Response: NMFS agrees that it would be advantageous to permit electronic filing of appeals; however, NMFS decided not to proceed with this method of filing because of privacy and security concerns. NMFS will accept filing by mail or commercial carrier. NMFS believes filing by fax machine is preferable to filing by mail or commercial carrier because the former is faster and less problematic than the latter.

Comment 6: One individual thinks fishermen need at least 60 days to file a petition.

Response: The Proposed Rule sets a default of a 45-day filing deadline; however, if the substantive program regulations contain a specified deadline this will supplant the default 45-day deadline. NMFS believes 45 days is a sufficient default.

Comment 7: One individual thinks ten days' notice of a hearing is too short and that at least 30 days' notice should be required. Another individual states that 10 days is too short for fishermen who may be at sea for more than 10 days at a time.

Response: The time frames in the final rule reflect a balancing of many factors, including the nature of the fishing industry, the need to provide a meaningful opportunity to be heard, and the need to resolve appeals in a timely manner to provide certainty for all limited access privilege holders. NMFS believes 10 days' notice of hearings provides due process. A 10 day timeframe appears in 15 CFR 906.8(b), 906.9(b) and (c), 906.11(a)(3), 906.16(a), and 906.17(a). The individual did not identify which part of the Proposed Rule he was referring to, but NMFS balanced similar considerations when determining the length of all time periods.

Comment 8: One individual does not think filing with NAO should be complete upon receipt at NAO's office and suggests NMFS use the model found at 15 CFR 904.3(b).

Response: NMFS believes it is necessary to have a clear date and time of filing and filing as of the date of a postmark may not provide that certainty. The federal regulations at 15 CFR part 904 *et seq.* apply to law enforcement proceedings. Although NMFS took them into consideration, NMFS believes the final rule is more appropriate for appeals of limited access privileges and other decisions.

Comment 9: One entity and three individuals recommend NMFS not give deference to the interpretation of an ambiguous regulation by the program office issuing the Initial Administrative Determination (IAD). One entity and one individual claim giving deference to the program office will prevent NMFS from being able to correct decisions made by program offices. One individual claims NMFS program employees are not properly trained in regulatory interpretation. The same individual requests that the RA make the final policy determinations. Another individual claims determining whether an interpretation is ambiguous or whether a program office's interpretation is reasonable would result in expensive and unproductive arguments.

Response: NAO (and the RA) generally review appeals de novo, and the final rule provides that NAO shall defer to the reasonable interpretations of applicable ambiguous laws and regulations made by the office issuing the initial administrative decision. NAO defers in that instance because the program office comes into contact with a much greater number of program cases than NAO, which encounters only those regulatory issues resulting in contested cases. The program office has expertise in this area and is in the best position to make determinations on ambiguous regulations. Further, because the

program office is interpreting regulations for all the applications for a specific program, they develop a consistent set of interpretations for that program. NMFS program employees are well-trained and consult with the regional sections of NOAA's Office of the General Counsel. NMFS believes that deferring to the program office in this area is appropriate. NAO is able to correct a program office decision when the office has not made a reasonable interpretation of an ambiguous regulation. In reviewing administrative appeals, the RA will consider the evidentiary record including arguments, claims, evidence of record and other documents of record that were before NAO when it rendered its decision or revised decision. Affording deference to the program office will not result in expensive and unproductive arguments, but rather will provide for both a sound process for interpreting ambiguous regulations and better appeals and agency decisions.

Comment 10: Two individuals recommend an appellant be given the opportunity to submit arguments regarding the program office's response to an NAO request for its interpretation of an ambiguous regulation. One individual recommends the program office be required to include its interpretation of an ambiguous regulation in its IAD. One individual recommends that if NMFS needs a program office interpretation then it should issue an order requiring a program office to provide an interpretation.

Response: Generally, a program office may interpret an ambiguous regulation in its IAD. If NAO determines that a regulation is ambiguous, it may be necessary for NAO to contact the program office to obtain its interpretation. The request can be made by order, but an order is not necessary. If NAO contacts a program office for its interpretation of an ambiguous regulation, an appellant will be provided notice of the request. The rules do not preclude an appellant from submitting arguments regarding a program office's response to a request for its interpretation.

Comment 11: One entity and two individuals indicated the requirement that copies be of ''equal legibility'' as the originals was not warranted. One individual said that appellants may only have carbon copies of documents, and suggested the standard for accepting copies should be left to the discretion of the appellate officer based on whether the copy is sufficiently clear.

Response: An appellate officer will decide whether to admit evidence into the NAO case record. To be offered as evidence, copies of documents must be of equal legibility and quality as the originals. Copies of documents that are not of equal legibility and quality as the originals may indicate documents that are suspect. NMFS needs the ability to reject documents that are suspect or because the quality of the original relates to a material fact.

Comment 12: Two individuals recommend that the RA have more than 10 days to review NAO decisions. One individual believes that if 10 days remains the time period then NAO should be required to transmit its decision to the RA by email. This individual also believes the term ''days'' should be clarified to mean business days. One individual does not believe the RA should be precluded from considering anything that was not before NAO. A third individual thinks the language addressing when an RA can issue a decision is unclear.

Response: NMFS removed the 10-day review period from 15 CFR 906.17 and clarified the RA review process in that section. The term ''day'' does not mean business day, but is defined in the rule as calendar day. It is appropriate for an appellant to present evidence to the fact finder. The fact finder for NMFS is NAO, who can probe the truth and veracity of evidence, determine credibility, and otherwise develop the record. The RA is not in a position to fact find because he or she is reviewing the record as it exists. NMFS clarified the RA review process in 15 CFR 906.17, specifying when an RA can issue a written decision adopting, remanding, reversing, or modifying NAO's decision or revised decision.

Comment 13: One entity and three individuals commented about the pre-hearing and hearing provisions of the proposed rule. The entity and an individual believe hearings should be recorded as a matter of law. One individual believes that a prehearing conference should be mandatory unless an appellate officer can justify, in writing, his or her decision to not hold a pre-hearing conference. The same individual echoes the concern with respect to hearings, stating that if a hearing is not held, an appellate officer should be required to state in writing why he or she decided a hearing was not necessary.

Response: Pre-hearings and hearings do not always need to be held. For example, if no material issues of fact or law are in dispute, a pre-hearing or hearing may be unnecessary. Further, holding unnecessary pre-hearings or hearings is an inefficient use of government resources. Because an appellate officer has the discretion to order a pre-hearing or hearing, there is no requirement for an appellant officer to state in writing why he or she did not order a hearing if he or she did not order a hearing. If an RA believes a hearing is necessary, he or she may remand the appeal for a hearing. While NAO may conduct formal hearings, typically, NAO's proceedings are informal and recording is not required by law. However, NAO will record all hearings unless an appellant consents to proceed without a recording.

Comment 14: One individual states the rule should include a provision for discovery and compelling witness testimony. Without a discovery process, according to the individual, it will be difficult for an appellant to prove his or her case. The same individual states that the rule is not clear about when an appellant can submit evidence in support of his or her petition. The same individual thinks without a hearing, an appellant cannot offer exhibits for the record.

Response: The rule is generally for informal proceedings. An appellant can obtain evidence to support his or her claim through various means, including the record from the NMFS office that issued the IAD. The rule allows the appellant to submit evidence to support his or her petition when the appellant files his or her petition to appeal. However, NAO will determine whether to admit proffered evidence into the record.

Comment 15: One individual states that once a motion for reconsideration is filed with NAO, NAO should issue a stay so that an appellant has time to meet the deadline for filing a petition for review before the RA.

Response: There is no petition for review to the RA. The RA reviews all appeals. NMFS modified the rule so that NAO will have adequate time to review a motion for reconsideration.

Comment 16: Two individuals state that the office issuing the administrative determination should provide a copy of the agency record to the appellant. One of the individuals suggests a twenty-day timeframe for transmitting the copy.

Response: NMFS assumes the individual's reference to ''administrative determination'' means IAD. The agency may supply records upon request and will follow all Federal law applicable to reviewing requests for records.

Comment 17: One individual agrees that ex parte communication on the merits of a pending appeal should not be permissible. The same individual, however, thinks the rule should apply

to communications between appellate officers and their chief.

Response: The chief is responsible for the quality and timeliness of the decisions issued by NAO and must be able to communicate with his or her employees.

Comment 18: One individual suggests NMFS add language to the Proposed Rule so that the office that issued the IAD may file a motion for reconsideration.

Response: Any party, including an agency that decides to be a party, may file for reconsideration. NMFS thinks this is appropriate since the parties participate in the proceedings.

Comment 19: One individual requests NMFS revise the Proposed Rule so that on reconsideration NAO can grant the motion and reopen the record to accept additional evidence or argument on the points raised in the petition for reconsideration.

Response: The final rule permits appellants to move for reconsideration. Reconsideration is not a new level of appeal. Rather, reconsideration is to correct errors of fact or law, based on evidence of record, that were made in the NAO decision. The appellate officer has discretion to reopen the record when appropriate.

Comment 20: One individual requested a yearly summary of decision outcomes in order to increase transparency and reduce the potential for corruption. One entity and two individuals recommend NAO publish all decisions by appellate officers and decisions by the RA in reviewing decisions by appellate officers. The entity and an individual thought names should not be redacted and that the decisions should be indexed. One individual requested that in addition to making decisions available, decisions be published on both NMFS headquarters Web site and the Web site from the region where the appeal originated. One individual wants decisions published within 10 days of issuance.

Response: NMFS appellate officers will apply the law to the facts in each individual appeal to determine case outcomes. A NMFS appellate officer will disqualify him or herself if he or she has a perceived or actual conflict of interest, prejudice or bias. NMFS may publish NAO and RA decisions on NMFS' Web site. If it does so, NMFS will comply with applicable laws and regulations, including but not limited to the Freedom of Information Act (FOIA), the Privacy Act, the Health Insurance Portability and Accountability Act (HIPAA), and the MSA.

Comment 21: Two entities and one individual suggest NMFS regional offices should be allowed to opt out of using NAO or that NAO should not exist. One individual asks how a program or office may opt in to use NMFS appeals process.

Response: The purpose of NAO is to provide a central forum, using uniform rules. To ensure consistency and fairness, NMFS believes it is advantageous to use one process when possible. The details for opting into NMFS administrative appeals process will be addressed as the need arises.

Comment 22: Two entities and one individual state that the MSA does not authorize a central appeals process. They advocate a process controlled exclusively by NMFS regional offices. One entity states local expertise is needed to adjudicate appeals. One individual adds NMFS is not following its policy articulated in NOAA Technical Memorandum NMFS–F/SPO–86, The Design and Use of Limited Access Privilege Programs, published in 2007. The individual says that document recommended handling appeals regionally. The same individual states that NMFS could set minimal standards for regions to follow in adjudicating appeals, but removing the adjudicative function entirely from the region is not the answer.

Response: The MSA requires NMFS to establish an appeals process for agency denials of limited access privileges under LAPPs. NMFS decided to vest that authority in NAO. NAO will base its decisions on published regulations, and be a neutral body. NMFS believes the fact that NAO is geographically removed from the regions does not undermine that neutrality, but enhances it. The Memorandum was published in 2007 and states that it is non-binding. In 2008, NMFS decided to create a centralized appeals office. The administrative appeals process will not forego regional input; each RA retains ultimate decision-making authority.

Comment 23: One individual thinks ''the only 'current infrastructure for LAPP appeals' is in the Alaska Region.'' One entity and one individual believe a centralized process will not be cost efficient. The individual believes there is no evidence the Office of Administrative Appeals, formerly at NMFS Alaska Regional Office, failed to achieve economies of scale or efficient use of resources. The individual thinks NMFS is disingenuous when it states: ''A cadre of experienced and well-trained appellate officers would free other employees to use their time performing duties within their area of expertise.'' The individual thinks that the time used to review NAO decisions will not be cost effective.

Response: All regions have a process for processing administrative appeals. In the Preamble to the Proposed Rule, NMFS stated: ''Historically, administrative appeals were processed by NMFS regional offices. Each NMFS region has had a different structure and process for resolving appeals.'' NMFS also noted: ''Most of the appeals processes currently used by NMFS pre-date the new MSA requirement. Further, the current infrastructure for LAPP appeals does not achieve optimum economies of scale, or efficient use of resources.'' NMFS believes that efficiencies will be realized through NAO rather than running five different processes in five different locations. The decision to consolidate appeals processes nationally was not directed at the Office of Administrative Appeals. NMFS acknowledges that NMFS employees will review NAO decisions. However, that does not undermine the benefits of a centralized process and enhances the checks and balance function inherent in a robust administrative appeals process.

Comment 24: One entity and one individual believe NAO should not be a division of NMFS Office of Management and Budget. The individual thinks NAO should be within an operational division of NMFS headquarters. The entity thinks NMFS Office of Management and Budget's responsibilities are alien to the substantive adjudication of LAPP entitlements.

Response: NAO is within the operations chain-of-command. NMFS believes placing NAO in the Office of Management and Budget would enhance neutrality and independence. LAPPs are not entitlement programs; as the name states, they are Limited Access Privilege Programs.

Comment 25: One entity and one individual state NMFS does not understand LAPPs because NMFS characterized LAPPs in the Proposed Rule as a privilege which may provide benefits to some members of the public while excluding others.

Response: LAPPs are not entitlement programs. LAPPs are privilege programs. Some members of the public will gain access, or the privilege to fish, and some members of the public may be excluded, as implied by the name Limited Access Privilege Programs.

Comment 26: One entity states NMFS is wrong that the Proposed Rule will not have a significant economic impact on a substantial number of small entities. The entity believes small entities face serious economic burden if they must pursue their appeals at a distant location.

Response: The cost of filing and participating in an appeal will typically be minimal. There are no filing fees, and no requirement that an appellant or witnesses appear for in-person hearings. This issue is discussed further in the Classification section, below. Further, implementing standardized rules could reduce the cost of appeals on small entities.

Comment 27: One individual states the Proposed Rule suggests NAO will be created after the Proposed Rule is finalized.

Response: NMFS established NAO in 2010. The Proposed Rule states that ''NAO adjudicates initial administrative determinations, defined in the proposed rule as agency actions that directly and adversely affect an appellant.'' In the Proposed Rule, NMFS proposed procedural rules to govern proceedings before NAO. With this final rule, NMFS implements procedural regulations governing NAO.

Comment 28: Two individuals state that NAO has not improved the quality of decision making.

Response: The comment is broader than the subject matter of the Proposed Rule. NAO does not yet function under the proposed procedural rules, as they have not yet been promulgated.

Comment 29: One individual questions whether an appellant can seek judicial review from a decision from NAO, and not undergo RA review.

Response: The agency decision is not final until after RA review, and judicial review cannot be initiated until after a final agency action occurs.

Changes From the Proposed Rule

NMFS made minor changes to the proposed rule. NMFS clarified the scope of NAO review by explicitly stating that the NAO process cannot be used to challenge the legality of underlying law (§ 906.1(e)). NMFS also consolidated text regarding the definition of ''day'' and ''ex parte communication,'' deleted definitions of ''person'' and ''Secretary'' because they are already defined in the MSA, and corrected typographical errors in the proposed rule.

In response to comments, NMFS revised the definition of ''preponderance of evidence'' (§ 906.14) and clarified the decisions to be made through the appeals process (§§ 906.3(b)(3), 906.15). NMFS also provided more flexibility regarding extensions of time to file documents (§ 906.4(d)) and amendments to petitions for appeal (§ 906.3(b)(3)(i)), but noted that a person may not request an extension of time for petitions to appeal (§ 906.3(e)(2)). NMFS also clarified the processes for motions for reconsideration (§ 906.16) and RA review (§ 906.17) and made edits for consistency in § 906.18 (Final Decision of the Department).

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. One comment was received regarding this certification (see comment 26). The commenter believes small entities face serious economic burden if they must pursue their appeals at a distant location. There is no requirement, however, that an appellant or witnesses appear in-person for a hearing. As noted in the proposed rule: ''Hearings are also held at the discretion of an appellate officer or if the appellate officer considers such hearing will materially advance his or her evaluation of the issues under appeal. In determining whether to hold a hearing, an appellate officer's discretion will be guided by whether the appellate officer believes oral testimony is required to resolve a material issue of fact or whether oral presentation is needed to probe a party's position on a material issue of law. Conferences and hearings may be in person, but more likely, they will be held by telephone or by other electronic means. The rule does not bar face-to-face hearings, but it is not intended to require expenditure of funds in order for an appellant to participate . . . in a hearing.'' (77 FR at 33981). NMFS, therefore, disagrees with the commenter, and believes that the costs of an appeal will be minimal. Because appeals will not result in significant costs for small entities, and no other new facts have come to light that would change the determination that this rule will not have a significant impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none was prepared.

List of Subjects in 15 CFR Part 906

Administrative appeals, Administrative practice and procedure, Fisheries.

Dated: January 30, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set forth in the preamble, 15 CFR part 906 is added to read as follows:

PART 906—NATIONAL APPEALS OFFICE RULES OF PROCEDURE

Sec.

Authority: 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 1374, 1375 and 1416; 16 U.S.C. 1540; 16 U.S.C. 773f; 16 U.S.C. 973f; 16 U.S.C. 1174; 16 U.S.C. 2437; 16 U.S.C. 4013; 16 U.S.C. 5507; 16 U.S.C. 7009; 16 U.S.C. 3637; 16 U.S.C. 5103 and 5106; 16 U.S.C. 5154 and 5158; 16 U.S.C. 6905, and; 16 U.S.C. 5010.

§ 906.1 Purpose and scope.

(a) This part sets forth the procedures governing administrative adjudications before the National Appeals Office (NAO).

(b) NAO will adjudicate appeals of initial administrative determinations in limited access privilege programs developed under section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and approved after the effective date of these regulations. Those appeals are informal proceedings.

(c) The procedures in this part may be incorporated by reference in regulations other than those promulgated pursuant to section 303A of the MSA.

(d) The Secretary of Commerce may request that NAO adjudicate appeals in any matter in controversy that requires findings of fact and conclusions of law, and other quasi-judicial matters that the Secretary deems appropriate, consistent with existing regulations. The Secretary will provide notice to potential appellants and to any affected party in these other matters through regulations or actual notice.

(e) The procedures in this part may not be used to seek review of the validity of statutes or regulations.

§ 906.2 Definitions.

As used in this part:

Agency record means all material and information, including electronic, the office that issued the initial administrative determination relied on or considered in reaching its initial administrative determination, or which otherwise is related to the initial administrative determination.

Appeal means an appellant's petition to appeal an initial administrative determination and all administrative processes of the National Appeals Office related thereto.

Appellant means a person who is the named recipient of an initial administrative determination and appeals it to the National Appeals Office.

Appellate officer means an individual designated by the Chief of the National Appeals Office to adjudicate the appeal. The term may include the Chief of the National Appeals Office.

Day means calendar day unless otherwise specified by the Chief of the National Appeals Office. When computing any time period specified under these rules, count every day, including intermediate Saturdays, Sundays, and legal holidays. If the date that ordinarily would be the last day for filing with NAO falls on a Saturday, Sunday, or Federal holiday, or a day NAO is closed, the filing period will include the first NAO workday after that date.

Department or *DOC* means the Department of Commerce.

Initial Administrative Determination or *IAD* means a determination made by an official of the National Marine Fisheries Service that directly and adversely affects a person's ability to hold, acquire, use, or be issued a limited access privilege. The term also includes determinations issued pursuant to other federal law, for which review has been assigned to the National Appeals Office by the Secretary.

NAO means the National Appeals Office, an adjudicatory body within the Office of Management and Budget, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce. The term generally means all NAO personnel, including appellate officers.

NAO case record means the agency record and all additional documents and other materials related to an appeal and maintained by NAO in a case file.

NMFS means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

National Oceanic and Atmospheric Administration or *NOAA* means the National Oceanic and Atmospheric Administration, Department of Commerce.

Party means a person who files a petition for appeal with NAO and an office that issued the IAD if that office participates in the NAO appeal.

Regional Administrator means the administrator of one of five regions of NMFS: Northeast, Southeast, West Coast, Alaska, or Pacific Islands. The term also includes an official with similar authority within the DOC, such as the Director of NMFS Office of Sustainable Fisheries.

Representative means an individual properly authorized by an appellant in writing to act for the appellant in conjunction with an appeal pending in NAO. The representative does not need to be a licensed attorney.

§ 906.3 Requesting an appeal and agency record.

(a) *Who may file.* Any person who is the named recipient of an initial administrative determination.

(b) *Petition to appeal.* (1) To request an appeal, a person shall submit a written petition of appeal to NAO.

(2) The petition shall include a copy of the initial administrative determination the person wishes to appeal.

(3) In the petition, the person shall state how the initial administrative determination directly and adversely affects him or her, why he or she believes the initial administrative determination is inconsistent with the law and regulations governing the initial administrative determination, and whether he or she requests a hearing or prefers that an appellate officer make a decision based on the NAO case record and without a hearing.

(i) Arguments not raised by the person in his or her petition to appeal will be deemed waived unless NAO permits amendments to the petition based on good cause for not raising the arguments in the original petition.

(ii) The petition may include additional documentation in support of the appeal.

(4) If a person requests a hearing, the written request must include a concise statement raising genuine and substantial issues of a material fact or law that cannot be resolved based on the documentary evidence.

(5) In the petition, a person shall state whether the person has a representative, and if so, the name, address, and telephone number for the representative.

(c) *Address of record.* In the petition, the person shall identify the address of record. Documents directed to the appellant will be mailed to the address of record, unless the appellant provides NAO and other parties with any changes to his or her address in writing.

(1) The address of record may include a representative's address.

(2) NAO bears no responsibility if the appellant or his or her representative does not receive documents because appellant or his or her representative changed his or her address and did not notify NAO.

(3) NAO bears no responsibility if the appellant or his or her representative fails to retrieve documents upon notification from the United States Postal Service or commercial carrier.

(4) NAO will presume that documents addressed to an address of record and properly mailed or given to a commercial carrier for delivery are received.

(d) *Place of filing.* The petition must be transmitted via facsimile. The facsimile number is: 301–713–2384. If the person filing the petition does not have access to a fax machine, he or she may file the petition by mail or commercial carrier addressed to Chief, National Appeals Office, 1315 East-West Hwy., Silver Spring, MD 20910.

(e) *Time limitations.* (1) A petition must be filed within 45 days after the date the initial administrative determination is issued unless a shorter or longer filing timeframe is explicitly specified in the regulations governing the initial administrative determination.

(2) A person may not request an extension of time to file a petition to appeal.

(f) *Agency record.* (1) Within 20 days of receipt of the copy of the petition to appeal, the office that issued the initial administrative determination that is the subject of the appeal shall transmit the agency record to NAO.

(2) The office that issued the initial administrative determination shall organize the documents of the agency record in chronological order. Pages attached to a primary submission shall remain with the primary submission.

(g) *Agency participation in appeal.* Within 20 days of receipt of the copy of the petition to appeal, the office that issued the initial administrative determination that is the subject of the appeal may provide written notice to NAO that it will be a party to the appeal. An office issuing the initial administrative determination is not required to be a party.

§ 906.4 General filing requirements.

(a) *Date of filing.* Filing refers to providing documents to NAO.

(1) Except for the agency record required under § 906.3(f), all documents filed on behalf of an appellant or related to an appeal shall be submitted to NAO via facsimile. The facsimile number is: 301–713–2384. If the person filing does not have access to a fax machine, he or she may file by regular mail or commercial carrier addressed to Chief, National Appeals Office, 1315 East-West Hwy., Silver Spring, MD 20910.

(2) A document transmitted to NAO is considered filed upon receipt of the entire submission by 5 p.m. Eastern Time at NAO.

(b) *Copies.* At the time of filing a submission to NAO, the filing party shall serve a copy thereof on every other party, unless otherwise provided for in these rules.

(c) *Retention.* All submissions to NAO become part of a NAO case record.

(d) *Extension of time.* When a submission is required to be filed at NAO by a deadline, a party may request, in writing, an extension of time to file the submission, citing the specific reason(s) for the need for an extension. NAO may grant one extension of up to 30 days if an appellate officer determines the party has established good cause for an extension of time, taking into account whether the party timely requested the extension or the extent to which the party missed the deadline.

§ 906.5 Service.

(a) Service refers to providing documents to parties to an appeal.

(1) Service of documents may be made by first class mail (postage prepaid), facsimile, or commercial carrier, or by personal delivery to a party's address of record.

(2) Service of documents will be considered effective upon the date of postmark (or as otherwise shown for government-franked mail), facsimile transmission, delivery to a commercial carrier, or upon personal delivery.

(b) A party shall serve a copy of all documents to all other parties and shall file a copy of all documents with NAO the same business day.

(c) NAO may serve documents by electronic mail.

§ 906.6 Ex parte communications.

(a) *Ex parte communication* means any oral or written communication about the merits of a pending appeal between one party and the NAO with respect to which reasonable prior notice to all parties is not given. However, ex parte communication does not include inquiries regarding procedures, scheduling, and status.

(b) Ex parte communication is not permissible unless all parties have been given reasonable notice and an opportunity to participate in the communication.

(c) If NAO receives an ex parte communication, NAO shall document the communication and any responses thereto in the NAO case record. If the ex parte communication was in writing, NAO shall include a copy of the communication in the NAO case record. If the ex parte communication was oral, NAO shall prepare a memorandum stating the substance of the oral communication, and include the memorandum in the NAO case record. NAO will provide copies of any such materials included in the NAO case record under this paragraph to the parties.

(d) NAO may require a party to show cause why such party's claim or interest in the appeal should not be dismissed, denied, disregarded, or otherwise adversely affected because of an ex parte communication.

(e) NAO may suspend this section during an alternative dispute resolution process established by regulation or agency policy.

(f) Communication with NAO, including appellate officers, concerning procedures, scheduling, and status is permissible.

§ 906.7 Disqualification of appellate officer.

(a) An appellate officer shall disqualify himself or herself if the appellate officer has a perceived or actual conflict of interest, a perceived or actual prejudice or bias, for other ethical reasons, or based on principles found in the American Bar Association Model Code of Judicial Conduct for Administrative Law Judges.

(b) Any party may request an appellate officer, at any time before the filing of the appellate officer's decision, to withdraw on the ground of personal bias or disqualification, by filing a written motion with the appellate officer setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) The appellate officer, orally or in writing, shall grant or deny the motion based on the American Bar Association Model Code of Judicial Conduct for Federal Administrative Law Judges and other applicable law or policy. If the motion is granted, the appellate officer will disqualify himself or herself and withdraw from the proceeding. If the motion is denied, the appellate officer will state the grounds for his or her ruling and proceed with his or her review.

§ 906.8 Scheduling and pre-hearing conferences.

(a) NAO may convene a scheduling and/or pre-hearing conference if, for example, an appellate officer in his or her discretion finds a conference will materially advance the proceeding.

(b) NAO shall notify the parties in writing 10 days prior to a conference unless the Chief of NAO orders a shorter period of time for providing notice of conducting a conference. A party may request one change in the scheduled pre-hearing date. In determining whether to grant the request, NAO will consider whether the requesting party has shown good cause for the change in date.

(c) In exercising his or her discretion whether to hold a scheduling and/or pre-hearing conference, an appellate officer may consider:

(1) Settlement, if authorized under applicable law;

(2) Clarifying the issues under review;

(3) Stipulations;

(4) Hearing(s) date, time, and location;

(5) Identifying witnesses for the hearing(s);

(6) Development of the NAO case record, and;

(7) Other matters that may aid in the disposition of the proceedings.

(d) *Recording.* NAO may record the conference.

(e) *Format.* At the discretion of the appellate officer, conferences may be conducted by telephone, in person, or by teleconference or similar electronic means.

(f) NAO may issue a written order showing the matters disposed of in the conference and may include in the order other matters related to the appeal.

§ 906.9 Exhibits.

(a) The parties shall mark all exhibits in consecutive order in whole Arabic numbers and with a designation identifying the party submitting the exhibit(s).

(b) Parties shall exchange all exhibits that will be offered at the hearing at least 10 days before the hearing.

(c) Parties shall provide all exhibit(s) to NAO at least 5 days before the hearing.

(d) NAO may modify the timeframe for exchanging or submitting exhibits if an appellate officer determines good cause exists.

(e) NAO may deny the admission into evidence of exhibits that are not marked and exchanged pursuant to this rule.

(f) Each exhibit offered in evidence or marked for identification shall be filed and retained in the NAO case record.

§ 906.10 Evidence.

(a) The Federal Rules of Evidence do not apply to NAO proceedings.

(b) An appellate officer will decide whether to admit evidence into the NAO case record.

(1) An appellate officer may exclude unduly repetitious, irrelevant, and immaterial evidence. An appellate officer may also exclude evidence to avoid undue prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence.

(2) An appellate officer may consider hearsay evidence.

(c) Copies of documents may be offered as evidence, provided they are of equal legibility and quality as the originals, and such copies shall have the same force and effect as if they were originals. If an appellate officer so directs, a party shall submit original documents to the appellate officer.

(d) An appellate officer may take official notice of Federal or State public records and of any matter of which courts may take judicial notice.

(e) An appellate officer may request, and the program office that issued the initial administrative determination in the case before the appellate officer will provide, the interpretation(s) of the law made by the program office and applied to the facts in the case.

§ 906.11 Hearing.

(a) *Procedures.* (1) An appellate officer in his or her discretion may order a hearing taking into account the information provided by an appellant pursuant to § 906.3(b)(3) and whether an appellate officer considers that a hearing will materially advance his or her evaluation of the issues under appeal. In exercising his or her discretion, an appellate officer may consider whether oral testimony is required to resolve a material issue of fact, whether oral presentation is needed to probe a party's position on a material issue of law, and whether a hearing was held previously for the same appeal. If an appellate officer determines that a hearing is not necessary, then the appellate officer will base his or her decision on the NAO case record. In the absence of a hearing an appellate officer may, at his or her discretion, permit the parties to submit additional materials for consideration.

(2) If an appellate officer convenes a hearing, the hearing will be conducted in the manner determined by NAO most likely to obtain the facts relevant to the matter or matters at issue.

(3) NAO shall schedule the date, time and place for the hearing. NAO will notify the parties in writing of the hearing date, time and place at least 10 days prior to the hearing unless the Chief of NAO orders a shorter period for providing notice or conducting the hearing. A party can request one change in the scheduled hearing date. In determining whether to grant the request, NAO will consider whether the requesting party has shown good cause for the change in date.

(4) At the hearing, all testimony will be under oath or affirmation administered by an appellate officer. In the event a party or a witness refuses to be sworn or refuses to answer a question, an appellate officer may state for the record any inference drawn from such refusal.

(5) An appellate officer may question the parties and the witnesses.

(6) An appellate officer will allow time for parties to present argument, question witnesses and other parties, and introduce evidence consistent with § 906.10.

(7) Parties may not compel discovery or the testimony of any witness.

(b) *Recording.* An appellate officer will record the hearing unless the appellant consents to proceed without a recording.

(c) *Format.* At the discretion of NAO, hearings may be conducted by telephone, in person, or by teleconference or similar electronic means.

§ 906.12 Closing the evidentiary portion of the NAO case record.

(a) At the conclusion of the NAO proceedings, an appellate officer will establish the date upon which the evidentiary portion of the NAO case record will close. Once an appellate officer closes the evidentiary portion of the NAO case record, with or without a hearing, no further submissions or argument will be accepted into the NAO case record.

(b) NAO in its discretion may reopen the evidentiary portion of the NAO case record or request additional information from the parties at any time prior to final agency action.

§ 906.13 Failure to appear.

If any party fails to appear at a pre-hearing conference or hearing after proper notice, an appellate officer may:

(a) Dismiss the case, or;

(b) Deem the failure of a party to appear after proper notice a waiver of any right to a hearing and consent to the making of a decision based on the NAO case record.

§ 906.14 Burden of proof.

On issues of fact, the appellant bears the burden of proving he or she should prevail by a preponderance of the evidence. Preponderance of the evidence is the relevant evidence in the NAO case record, considered as a whole, that shows that a contested fact is more likely to be true than not true. Appellant has the obligation to obtain and present evidence to support the claims in his or her petition.

§ 906.15 Decisions.

(a) After an appellate officer closes the evidentiary portion of the NAO case record, NAO will issue a written decision that is based on the NAO case record. In making a decision, NAO shall determine whether the appellant has shown by a preponderance of the evidence that the initial administrative determination is inconsistent with the law and regulations governing the initial administrative determination. In making a decision, NAO shall give deference to the reasonable interpretation(s) of applicable ambiguous laws and regulations made by the office issuing the initial administrative determination.

(b) NAO shall serve a copy of its decision upon the appellant and the Regional Administrator. NAO will not provide the case record to the Regional Administrator when issuing its decision.

§ 906.16 Reconsideration.

(a) Any party may file a motion for reconsideration of an NAO decision issued under § 906.15. The request must be filed with NAO within 10 days after service of NAO's decision. A party shall not file more than one motion for reconsideration of an NAO decision.

(b) The motion must be in writing and contain a detailed statement of an error of fact or law material to the decision. The process of reconsideration is not a forum for reiterating the appellant's objections to the initial administrative determination.

(c) Arguments not raised by a party in his or her motion for reconsideration of a decision will be deemed waived.

(d) In response to a motion for reconsideration, NAO will either:

(1) Reject the motion because it does not meet the criteria of paragraph (a) or (b) of this section; or

(2) Issue a revised decision and serve a copy of its revised decision upon the appellant and the Regional Administrator.

(e) At any time prior to notifying the Regional Administrator pursuant to § 906.17(a), the NAO may issue a revised decision to make corrections and serve a copy of its revised decision upon the appellant and the Regional Administrator.

§ 906.17 Review by the Regional Administrator.

(a) If NAO does not receive a timely motion for reconsideration pursuant to § 906.16(a), receives a timely motion and rejects it pursuant to § 906.16(d)(1), or issues a revised decision pursuant to § 906.16(d)(2) or (e), NAO will notify the Regional Administrator and the appellant, and provide a copy of the case record for its decision or revised decision to the Regional Administrator.

(b) In reviewing NAO's findings of fact, the Regional Administrator may only consider the evidentiary record including arguments, claims, evidence of record and other documents of record that were before NAO when it rendered its decision or revised decision.

(c) The Regional Administrator may take the following action within 30 days of service of NAO's notification and receipt of the case record under paragraph (a) of this section:

(1) Issue a written decision adopting, remanding, reversing, or modifying NAO's decision or revised decision.

(2) Issue a stay for no more than 90 days to prevent NAO's decision or revised decision from taking effect.

(d) The Regional Administrator must provide a written decision explaining why an NAO decision or revised decision has been remanded, reversed, or modified. Consistent with § 906.18(b), the Regional Administrator may, but does not need to, issue a written decision to adopt an NAO decision or revised decision.

(e) The Regional Administrator will serve a copy of any written decision or stay on NAO and the appellant.

§ 906.18 Final decision of the Department.

(a) The Regional Administrator's written decision to adopt, reverse, or modify an NAO decision or revised decision pursuant to § 906.17(c) is the final decision of the Department for the purposes of judicial review.

(b) If the Regional Administrator does not take action pursuant to § 906.17(c)(1), NAO's decision issued pursuant to § 906.15(a) or revised decision issued pursuant to § 906.16(d)(2) or (e) becomes the final decision of the Department for the purposes of judicial review 30 days after service of NAO's notification under § 906.17(a), or upon expiration of any stay issued by the Regional Administrator pursuant to § 906.17(c)(2).

(c) The office that issued the initial administrative determination shall implement the final decision of the Department within 30 days of service of the final decision issued pursuant to § 906.18(a), or within 30 days of the decision becoming final pursuant to § 906.18(b), to the extent practicable.

[FR Doc. 2014–02565 Filed 2–5–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2012–0967]

RIN 1625–AA01

Anchorage Regulations: Pacific Ocean at San Nicolas Island, Calif.; Restricted Anchorage Areas

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Coast Guard is confirming the changes made to the restricted anchorage areas of San Nicolas Island, California. A direct final rule detailing the changes was published in the **Federal Register** on November 12, 2013, (78 FR 67300). We received no adverse comments in response to the direct final rule, therefore, the rule will go into effect as scheduled.

DATES: The effective date of the direct final rule published on November 12, 2013, is confirmed as February 10, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Junior Grade Blake Morris, Waterways Management Branch, U.S. Coast Guard; telephone (510) 437–3801, email *Blake.J.Morris@uscg.mil.*

SUPPLEMENTARY INFORMATION: On November 12, 2013, we published a direct final rule and request for comment entitled, ''Anchorage Regulations: Pacific Ocean at San Nicolas Island, Calif.; Restricted Anchorage Areas'' in the **Federal Register** (78 FR 67300). That rule announced our intent to amend the restricted anchorage areas of San Nicolas Island, California, by removing the west area anchorage restriction and decreasing the size of the east area anchorage restriction.

In the direct final rule we notified the public of our intent to make the rule effective on February 10, 2014, unless an adverse comment, or notice of intent to submit an adverse comment, was received on or before January 13, 2014. We did not receive any adverse comments or notices of intent to submit an adverse comment on the rule. Therefore, under 33 CFR 1.05–55(d), we now confirm that the amendments to the restricted anchorage areas of San Nicolas Island, California, will become effective, as scheduled, on February 10, 2014.

Dated: January 16, 2014.

K.L. Schultz,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2014–02214 Filed 2–5–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0028]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Galveston, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the Galveston Causeway Railroad Vertical Lift Bridge across the Gulf Intracoastal Waterway, mile 357.2 west of Harvey Locks, at Galveston, Galveston County, Texas. The deviation is necessary in order to conduct repairs to the bridge. These repairs are essential for the continued safe operation of the bridge. This deviation allows the bridge to remain temporarily closed to navigation for three hours in the morning and three hours in the afternoon with an opening in the middle of the day to allow for the passage of vessels.

DATES: This deviation is effective from 8 a.m. to 3:30 p.m. on Thursday, February 27, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0028] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David Frank, Bridge Administration Branch, Coast