

(d) An Initial Decision becomes effective as the final administrative decision of NOAA 60 days after service, unless:

(1) Otherwise provided by statute or regulations;

(2) The Judge grants a petition for reconsideration under § 904.272; or

(3) A petition for discretionary review is filed or the Administrator issues an order to review upon his/her own initiative under § 904.273.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38939, June 30, 2022]

§ 904.272 Petition for reconsideration.

Unless an order or Initial Decision of the Judge specifically provides otherwise, any party may file a petition for reconsideration of an order or Initial Decision issued by the Judge. Such petitions must state the matter claimed to have been erroneously decided, and the alleged errors and relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of such order or Initial Decision. The filing of a petition for reconsideration shall operate as a stay of an order or Initial Decision or its effectiveness date unless specifically so ordered by the Judge. Within 15 days after the petition is filed, any party to the administrative proceeding may file an answer in support or in opposition.

[87 FR 38940, June 30, 2022]

§ 904.273 Administrative review of decision.

(a) Subject to the requirements of this section, any party who wishes to seek review of an Initial Decision of a Judge must Petition for Review of the Initial Decision within 30 days after the date the decision is served. The petition must be served on the Administrator in conformance with § 904.3(b) at the following address: Administrator, National Oceanic and Atmospheric Administration, Department of Commerce, Room 5128, 14th Street and Constitution Avenue NW, Washington, DC 20230. Copies of the Petition for Review, and all other documents and materials required in paragraph (d) of this section, must be served in conformance with § 904.3(b) on all parties and to ei-

ther *administrative.appeals@noaa.gov* or the following address: Chief, Oceans and Coasts Section, NOAA Office of General Counsel, 1305 East-West Highway, SSMC 4, Suite 6111, Silver Spring, MD 20910.

(b) The Administrator may elect to issue an order to review the Initial Decision without petition and may affirm, reverse, modify or remand, in whole or in part, the Judge's Initial Decision. Any such order must be issued within 60 days after the date the Initial Decision is served.

(c) Review by the Administrator of an Initial Decision is discretionary and is not a matter of right. If a party files a timely petition for discretionary review, or review is timely initiated by the Administrator, the effectiveness of the Initial Decision is stayed until further order of the Administrator or until the Initial Decision becomes final pursuant to paragraph (h) of this section. In determining whether or not to grant discretionary review, the Administrator will consider:

(1) Whether the Initial Decision contains significant factual or legal errors that warrant further review by the Administrator; and

(2) Whether fairness or other policy considerations warrant further consideration by the Administrator. Types of cases that fall within these criteria include, but are not limited to, those in which:

(i) The Initial Decision conflicts with one or more other NOAA administrative decisions or federal court decisions on an important issue of federal law;

(ii) The Judge decided an important federal question in a way that conflicts with prior rulings of the Administrator;

(iii) The Judge decided a question of federal law that is so important that the Administrator should pass upon it even absent a conflict; or

(iv) The Judge so far departed from the accepted and usual course of administrative proceedings as to call for an exercise of the Administrator's supervisory power.

(d) A Petition for Review must comply with the following requirements regarding format and content: