

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 904**

[Docket No. 040902252-4252-01; I.D. 092804C]

RIN 0648-AS54

Civil Procedures

AGENCY: Office of General Counsel for Enforcement and Litigation, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA is proposing amendments and technical refinements to its Civil Procedures which govern NOAA's administrative proceedings for assessment of civil penalties; suspension, revocation, modification, or denial of permits; issuance and use of written warnings; and release or forfeiture of seized property.

DATES: Submit comments on or before December 13, 2004.

ADDRESSES: Comments should be submitted in writing to Meggan Engelke-Ros, Enforcement Attorney, Office of General Counsel for Enforcement and Litigation, 8484 Georgia Avenue, Suite 400, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Meggan Engelke-Ros or Susan S. Beresford, 301-427-2202.

SUPPLEMENTARY INFORMATION:**I. Background**

NOAA is proposing to amend the civil procedure rules that apply to its administrative proceedings as described below. NOAA is proposing the changes described herein to: (1) Conform the civil procedure rules to changes in applicable federal laws and regulations; (2) improve the efficiency and fairness of administrative proceedings; (3) clarify any ambiguities or inconsistencies in the existing civil procedure rules; (4) eliminate redundant language and correct language errors; and (5) conform the civil procedure rules to current agency practice.

II. Proposed Revisions*Subpart A—General***1. Purpose and Scope**

Section 904.1: This section would be amended to add new statutory references: American Fisheries Act of 1998; Anadromous Fish Products Act; Antarctic Protection Act; Atlantic Coastal Fisheries Cooperative Management Act; Dolphin Protection

Consumer Information Act; Driftnet Impact Monitoring, Assessment, and Control Act; Fish and Seafood Promotion Act of 1986; Fisherman's Protective Act of 1967; High Seas Fishing Compliance Act; North Pacific Anadromous Stocks Convention Act of 1992; Northwest Atlantic Fisheries Convention Act of 1995; Shark Finning Prohibition Act; South Pacific Tuna Act of 1988; and the Weather Modification Reporting Act. These additions would reflect statutes passed or amended since the last revision of these procedural regulations as well as statutes inadvertently left out of the current regulations. These statutes authorize NOAA to assess civil penalties and conduct seizures of property subject to forfeiture and, therefore, are subject to the application of this chapter of the Code of Federal Regulations.

Reference to the North Pacific Fisheries Act of 1954 was deleted because the statute is no longer in effect.

The proposed revision would also change "Magnuson Fishery Conservation and Management Act" to "Magnuson-Stevens Fishery Conservation and Management Act" to reflect the amendment to the title of that statute. (For consistency, references to "Magnuson Act" have been amended to "Magnuson-Stevens Act" throughout these regulations.) Likewise, the proposed revision would change "National Marine Protection, Research, and Sanctuaries Act" to "National Marine Sanctuaries Act".

2. Definitions

Section 904.2: The term "ALJ Docketing Center" is proposed for addition to the definitions section. The term "authorized officer" is proposed for addition to the definitions section. The definition of "decision" would be amended to coincide with the existing definitions of "initial decision" and "final administrative decision". A definition of the acronym "NIDP" would be added for clarity. A definition of the acronym "NMFS" would be added for clarity. A definition of the acronym "NOPS" would be added for clarity. A definition of the acronym "PPIP" would be added for clarity. The term "settlement agreement" would be added to the definitions section, and includes agreements providing for payment of civil penalties, eliminating the need for a separate definition of the term "payment agreement", which is deleted. A definition of the acronym "USCG" would be added for clarity. The term "vessel owner" would be revised to improve accuracy.

3. Filing and Service of Notices, Documents and Other Papers

Section 904.3: This section heading would be amended from "Filing and service of documents" to "Filing and service of notices, documents and other papers", to consolidate and distinguish procedures for service and filing of notices (NOVAs, NOPS, NIDPs) and other documents. (See § 904.202). During the review process, GCEL will be reviewing the technological issues related to the feasibility of e-transmission of documents. If the technology and procedures for e-transmission have developed to a point where they can be effectively utilized for notices and documents, GCEL will include the authority to permit e-transmission, which may include the further development of specific language to address the unique issues associated with e-transmission. Any comments on the viability of e-transmission for documents related to litigation are welcome.

4. Computation of Time Periods

Section 904.4: A new section, § 904.4, "computation of time periods", would be created from the present § 904.3(d) to explain the rules relating to computation of time periods that apply to notices and to other types of documents which are filed and served. The proposed rules relating to computation of time periods comport with those established by the Federal Rules of Civil Procedure.

5. Appearances

Section 904.5: A new section, § 904.5, "Appearances", would be created, replacing § 904.203, "Appearances", which would be eliminated. The new section would include the existing language of § 904.203, and add a new requirement that any attorney or other representative enter a written notice of appearance when representing a person regarding an Agency enforcement matter, or when representing a party in any civil administrative hearing.

*Subpart B—Civil Penalties***1. Notice of Violation Assessment (NOVA)**

Section 904.101: Paragraph (a) would be amended to delete redundant language in the first sentence pertaining to service of the NOVA, as this would be fully covered by the operative provisions of proposed § 904.3. The second sentence of § 904.101(a)(4) would be modified and designated as a new § 904.101(a)(5). No substantive change is intended by this revision.