

criminal prosecution for violation of any of the fishery or marine resource laws that NOAA administers, including the following:

Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627;
 Antarctic Conservation Act of 1978, 16 U.S.C. 2401-2412;
 Atlantic Tuna Conventions Act of 1975, 16 U.S.C. 971-971g;
 Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601 *et seq.*;
 Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*;
 Endangered Species Act of 1973, 16 U.S.C. 1531-1543;
 Fur Seal Act of 1966, 16 U.S.C. 1158 *et seq.*;
 Lacey Act Amendments of 1981, 16 U.S.C. 3371-3378;
 Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882;
 Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;
 Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-1434;
 Merchant Marine Act of 1936, 46 U.S.C. 1271-1279;
 Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k;
 North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1032;
 Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.*;
 Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f;
 Sponge Act, 16 U.S.C. 781 *et seq.*;
 Tuna Conventions Act of 1950, 16 U.S.C. 951-961;
 Whaling Convention Act of 1949, 16 U.S.C. 916-916l.

§ 904.405 Definitions.

A written warning is a notice in writing to a person that a violation of a minor or technical nature has been documented against the person or against the vessel which is owned or operated by the person. A "citation" under Section 311(c) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1861(c), and Section 11(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773i(c), is considered a written warning under these regulations.

§ 904.410 Written warning as a prior offense.

A written warning may be used as a basis for dealing more severely with a subsequent offense, including, but not limited to, a violation of the same statute or an offense involving an activity that is related to the prior offense.

§ 904.415 Procedures.

(a) Any person authorized to enforce the laws listed in § 904.400 of this Subpart E who finds a violation of one of the laws may issue a written warning to a violator in lieu of other law enforcement action that could be taken under the applicable statute.

(b) The written warning will: (1) State that it is a "written warning"; (2) state the factual and statutory or regulatory basis for its issuance; (3) advise the violator of its effect in the event of a future violation; and (4) inform the violator of the right of review and appeal under § 904.420 of this Subpart E.

(c) NOAA will maintain a record of written warnings that are issued.

(d) If, within 120 days of the date of the written warning, further investigation indicates that the violation is more serious than realized at the time the written warning was issued, or that the violator previously committed a similar offense for which a written warning was issued or other enforcement action was taken, NOAA may withdraw the warning and commence other civil or criminal proceedings.

(e) For written warnings under the Magnuson Fishery Conservation and Management Act or the Northern Pacific Halibut Act of 1982, the enforcement officer will note the warning, its date, and reason for its issuance on the permit, if any, of the vessel used in the violation. If noting the warning on the permit of the vessel is impracticable, notice of the written warning will be served personally, or by registered or certified mail, return receipt requested, on the vessel's owner, operator, or designated agent for service of process, and such service will be deemed notation on the permit.

§ 904.420 Review and appeal of a written warning.

(a) If a person believes that he or she should not have been given a written warning, the person may, within 90 days of the date of receipt of the written warning, submit to the appropriate NOAA Regional Attorney in writing the facts and circumstances that explain or deny the violation described in the warning. The NOAA Regional Attorneys are located at:

Regional Counsel, Office of General Counsel, NOAA, 14 Elm Street, Federal Building, Gloucester, MA 01930

Regional Counsel, Office of General Counsel, NOAA, 9450 Koger Blvd., Suite 127, St. Petersburg, FL 33702

Regional Counsel, Office of General Counsel, NOAA, Bin C15700, 7600 Sandpoint Way, NE., Seattle, WA 98115

Regional Counsel, Office of General Counsel, NOAA, 300 South Ferry Street, Room 2020, Terminal Island, CA 90731

Regional Counsel, Office of General Counsel, NOAA, P.O. Box 1668, Juneau, AK 99802.

The Regional Attorney will review the information and notify the person of his or her decision.

(b) A person may appeal the decision of the Regional Attorney to the NOAA Assistant General Counsel for Enforcement and Litigation, Room 275, Page I Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235. The appeal must be brought within 30 days of receipt of the decision of the Regional Attorney. The Assistant General Counsel for Enforcement and Litigation may, in his or her discretion, affirm, expunge, or modify the written warning and will notify the appellant of the decision. The decision constitutes the final agency action.

[FR Doc. 84-12 Filed 1-5-84; 8:45 am]

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15 CFR Parts 904, 924, 929, 935, 936, 937, and 938

50 CFR Parts 215, 216, 220, 222, 285, 611, 621, 649, 650, 651, 652, 655, 672, 674, 675, 680, and 681

[Docket No. 31031-215]

Civil Procedures; Permit Sanctions and Denials

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: NOAA issues this interim rule consolidating its procedural regulations for sanctioning permits issued under many of the statutes for which it has enforcement responsibility. The major statutes are the Magnuson Fishery Conservation and Management Act, the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Atlantic Tunas Convention Act of 1975. The intended effect is to consolidate, expand, and replace numerous procedural regulations. The regulations are added as Subpart D to NOAA's interim final regulations governing civil procedures.

DATES: These rules are effective January 6, 1984, as interim rules. Comments must be submitted on or before April 5, 1984.

ADDRESSES: Interested persons are invited to submit written comments to the NOAA Office of General Counsel (GCEL), Room 275, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Margaret Fralley or Linda Marks, (202) 254-8350 [Address above].

SUPPLEMENTARY INFORMATION: These regulations consolidate existing regulations that provide for suspension, revocation, modification, or denial of permits issued under the following statutes: Magnuson Fishery Conservation and Management Act; Marine Mammal Protection Act of 1972; Endangered Species Act of 1973; Atlantic Tunas Convention Act of 1975; Fur Seal Act of 1966; Marine Protection, Research and Sanctuaries Act; and Northern Pacific Halibut Act of 1982. They do not replace regulations governing permit sanctions or denials under the Deep Seabed Hard Mineral Resources Act, Ocean Thermal Energy Conversion Act of 1980, or Agricultural Marketing Act of 1946.

The regulations provide for a permit sanction or denial upon the commission of an offense prohibited by a NOAA-administered statute, or when a civil penalty or judicial assessment has not been paid. The regulations make clear that all of a permit holder's permits may be subject to sanction or denial because of a violation or nonpayment. Violation of a statute, regulation, or permit may be the basis of a sanction when committed by the actual permit holder or by an agent or employee of the permit holder.

These regulations are not intended to affect permits issued by a state, even though the administration of some fishery management plans relies on state permits.

The regulations provide for the issuance of a Notice of Permit Sanction (NOPS) that would set forth any opportunity for a hearing. The opportunity for a hearing is not given in all instances; no hearing will be granted if the permit holder was provided an earlier opportunity for a hearing on the matter forming the basis of the sanction (e.g., an unpaid civil penalty). However, the Administrator, on his or her own initiative, may order a hearing on a permit sanction. This does not expand a permit holder's right to a hearing, but merely gives the Administrator the discretion to hold a hearing. Hearing procedures governing permit sanction proceedings are already set forth in 15 CFR Part 904, Subpart C.

When no opportunity for a hearing is provided, the permit holder ordinarily will have 30 days to achieve compliance (e.g., pay the penalty) before the sanction takes effect.

After a hearing, the Administrative Law Judge (ALJ) makes a recommended decision to the Administrator on the matter. The Administrator (or designee) then issues the final agency decision on the sanction. Because a NOPS may be issued in conjunction with a Notice of Violation and Assessment (NOVA), and

hearings on the two may be consolidated, the Administrator might wait to issue the permit sanction decision until the civil penalty matter is settled. For example, an ALJ's initial decision on a Magnuson Act civil penalty may be under review by the Administrator, while the ALJ's recommendation as to the permit sanction must be acted on by the Assistant Administrator for Fisheries. The Assistant Administrator might defer final action on the permit sanction, since the basis for the civil penalty and the NOPS is the same violation. This may also happen when a related case is being litigated in a federal court.

The regulations establish a new procedure not found in existing permit sanction regulations, the issuance of a Notice of Intent to Deny Permit (NIDP). An NIDP may be issued to a permit applicant if an administrative or judicial case is pending against the applicant and the violation warrants a permit sanction. An NIDP will be issued instead of a NOPS where there is no existing permit or where the previous permit has expired, or may be issued in combination with a NOPS. An NIDP, like a NOPS, may be issued in conjunction with a NOVA, and the hearings on the two consolidated.

NOAA is considering adding language at § 904.302(c) that would allow a vessel permit sanction to be linked to the vessel itself, so that a sale or other transfer would not extinguish the sanction. This would be particularly useful when suspending a permit for failure to pay a civil penalty. The sanction would not follow the transfer when the purchaser or transferee had no actual or constructive notice of the sanction. NOAA invites comments on this idea, including methods of providing notice.

Section 904.322 provides for emergency action to be taken in limited instances. NOAA would seek such action after a NOPS or NIDP is issued, but before a final decision is made on the sanction or denial. Interim action will be taken only after the ALJ finds there is probable cause to believe the violation(s) charged was committed. If ordered by the ALJ, the sanction will take effect immediately.

Request for Comments

These rules are effective on January 6, 1983, as interim rules. Although no notice and comment period is required for rules of agency procedure or practice, we are requesting comment on the regulations and will review them in light of the comments.

Classification

NOAA has determined that these regulations are not a major rule as defined by Executive Order 12291, "Federal Regulations." The Regulatory Flexibility Act does not apply because no notice of proposed rulemaking is required. These regulations are categorically excluded from preparation of an Environmental Analysis under the National Environmental Policy Act of 1969 by NOAA Directive 02-10. They do not require information to be collected, and therefore the Paperwork Reduction Act does not apply.

List of Subjects in 50 CFR Part 904

Administrative practice and procedure, Permits, Sanctions.

Dated: December 28, 1983.

Samuel A. Lawrence,

Director, Office of Administrative and Technical Services, National Oceanic and Atmospheric Administration.

1. The following new Subpart D is added to 15 CFR Part 904:

PART 904—CIVIL PROCEDURES

Subpart D—Permit Sanctions and Denials

General

Sec.	
904.300	Scope and applicability.
904.301	Definitions.
904.302	Bases for sanctions or denials.
904.303	Notice of permit sanction.
904.304	Notice of intent to deny permit.
904.305	Opportunity for hearing.
904.306	Hearing and decision.
904.307-904.309	[Reserved]

Sanctions for Nonpayment of Penalties

904.310	Nature of sanctions.
904.311	Compliance.
904.312-904.319	[Reserved]

Sanctions for Violations

904.320	Nature of sanctions.
904.321	Reinstatement of permit.
904.322	Interim action.
904.323-904.399	[Reserved]

Authority: Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g; Endangered Species Act of 1973, 16 U.S.C. 1531-43; Fur Seal Act of 1966, 16 U.S.C. 1158 *et seq.*; Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407; Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-34; Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k.

General

§ 904.300 Scope and applicability.

(a) This Subpart establishes policies and procedures for the suspension, revocation, modification, and denial of

permits for reasons relating to enforcement of many of the statutes NOAA administers. These reasons include nonpayment of civil penalties or criminal fines, and violations of statutes, regulations, or permit conditions. Nothing in this Subpart precludes sanction or denial of a permit for reasons not relating to enforcement. As appropriate, and unless otherwise specified in this Subpart, the provisions of Subparts B and C apply to these regulations.

(b) These regulations cover sanctions and denials of permits issued under the following statutes:

- (1) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g;
- (2) Endangered Species Act of 1973, 16 U.S.C. 1531-43;
- (3) Fur Seal Act of 1966, 16 U.S.C. 1158 *et seq.*;
- (4) Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*;
- (5) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;
- (6) Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-34;
- (7) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k.

Regulations governing sanctions for permits under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*) appear at 15 CFR Part 970; under the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 *et seq.*), at 15 CFR Part 981; under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-27), at 50 CFR 260.50.

§ 904.301 Definitions.

Unless the context otherwise requires, terms in this Subpart have the meanings prescribed in the applicable statute or in Subparts B and C. In addition, the following definitions apply:

"Applicant"—means any person who applies or is expected to apply for a permit covered by this Subpart.

"NIDP"—means notice of intent to deny application or permit.

"NOPS"—means notice of permit sanction.

"Payment agreement"—means any promissory note, security agreement, or other contract specifying the terms according to which a permit holder agrees to pay a civil penalty.

"Permit holder"—means the holder of a permit or any agent or employee of the holder, and includes the owner and operator of a vessel for which the permit was issued.

"Sanction"—means suspension, revocation, or modification of a permit (see § 904.320).

§ 904.302 Bases for sanctions or denials.

(a) Unless otherwise specified in a settlement agreement, the Administrator may take action under this Subpart with respect to any permit issued under the statutes listed in § 904.300(b). The bases for an action to sanction or deny a permit are as follows:

(1) The commission of any offense prohibited by statutes administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder or with the use of a permitted vessel;

(2) The failure to pay a civil penalty assessed under Subparts B and C of this Part; or

(3) The failure to pay a criminal fine imposed or any other liability incurred in a judicial proceeding under any of the statutes administered by NOAA.

(b) A sanction or denial of a permit under this Subpart is not limited to the particular permit pertaining to the offense or nonpayment, but may be applied to any NOAA permit held or sought by the permit holder, including permits for other activities or for other vessels. Examples of the application of this policy are the following:

(1) NOAA suspends Vessel A's fishing permit for nonpayment of a civil penalty pertaining to Vessel A. The owner of Vessel A buys Vessel B and applies for a permit for Vessel B to participate in a different fishery. NOAA may withhold that permit until the sanction against Vessel A is lifted.

(2) NOAA revokes a Marine Mammal Protection Act permit for violation of its conditions. The permit holder subsequently applies for a permit under the Endangered Species Act. NOAA may deny the ESA application.

(3) Captain X, an officer in Country Y's fishing fleet, is found guilty of assaulting an enforcement officer. NOAA may impose a condition on the permits of Country Y's vessels that they may not fish in the fishery conservation zone with Captain X aboard. (See § 904.320(c) of this Part 904.)

(c) Sanction not extinguished by sale. [Reserved]

§ 904.303 Notice of permit sanction.

(a) A NOPS will be served personally or by registered or certified mail, return receipt requested, on the permit holder. When a foreign fishing vessel is involved, service will be made on the agent authorized to receive and respond to any legal process for vessels of that country.

(b) The NOPS will set forth the sanction to be imposed, the bases for the sanction, and any opportunity for a hearing. It will state the effective date of

the sanction, which will ordinarily not be earlier than 30 calendar days after the date of receipt of the NOPS (see § 904.322). If a hearing opportunity is provided and a hearing is requested in a timely manner, the sanction will take effect pursuant to § 904.306.

(c) Upon demand by an authorized enforcement officer, a permit holder shall surrender a permit against which a sanction has taken effect. The effectiveness of the sanction, however, does not depend on surrender of the permit.

§ 904.304 Notice of intent to deny permit.

(a) The Administrator may issue an NIDP if the applicant has been charged with a violation of a NOAA-administered statute, regulation, or permit.

(b) The NIDP will set forth the basis for its issuance and any opportunity for a hearing, and will be served in accordance with § 904.303(a).

(c) The Administrator will not refund any fee(s) submitted with a permit application if an NIDP is issued.

(d) An NIDP may be issued in conjunction with or independent of a NOPS. Nothing in this section should be interpreted to preclude NOAA from initiating a permit sanction action following issuance of the permit, or from withholding a permit pursuant to § 904.310(c) or § 904.320.

§ 904.305 Opportunity for hearing.

(a) Except as provided in paragraph (b) of this section, the recipient of a NOPS or NIDP will be provided an opportunity for a hearing. The hearing may be combined with any other hearing under this Part.

(b) There will be no opportunity for a hearing if, with respect to the violation that forms the basis for the NOPS or NIDP, the permit holder had a previous opportunity to participate as a party in a judicial or administrative hearing, whether or not the permit holder did participate, and whether or not such a hearing was held.

(c) If entitled to a hearing under this section, the recipient of a NOPS or NIDP will have 30 calendar days from receipt of the notice to request a hearing. A request for hearing must be dated and in writing. Failure to request a hearing within 30 days constitutes a waiver of the opportunity for a hearing.

(d) If no hearing is requested, the Administrator may nonetheless order a hearing if required in the interests of justice. This paragraph does not create any right to a hearing in addition to the right provided in paragraph (a) of this section.

§ 904.306 Hearing and decision.

(a) Except as provided in this section, hearing procedures are governed by Subpart C of this Part.

(b) After the close of a hearing and the submission of briefs in accordance with § 904.262, the Administrative Law Judge will issue a recommended decision to the Administrator. As soon as practicable, the Administrator will decide the matter and serve notice of the decision on the parties in the manner provided by § 904.303(a). The decision will be final and unappealable and not subject to § 904.272.

(c) In his or her discretion, the Administrator may refrain from issuing a decision on a NOPS or NIDP pending a decision on a related matter.

§§ 904.307-904.309 [Reserved]**Sanctions for Nonpayment of Penalties****§ 904.310 Nature of sanctions.**

(a) The Administrator may suspend a permit if:

(1) A civil penalty has been assessed against the permit holder under Subparts B and C of this Part, but the permit holder has failed to pay the penalty, or has defaulted on a payment agreement; or

(2) A criminal fine or other liability for violation of any of the statutes administered by NOAA has been imposed against the permit holder in a judicial proceeding, but payment has not been made.

(b) Suspension of a permit under the circumstances set forth in paragraph (a) is mandatory if the permit is for a foreign fishing vessel under section 204(b) of the Magnuson Fishery Conservation and Management Act.

(c) The Administrator will withhold any other permit for which the permit holder applies if either condition in § 904.310(a) is applicable.

§ 904.311 Compliance.

If the permit holder pays the fine or penalty in full or agrees to terms satisfactory to the Administrator for payment:

(a) The suspension will not take effect;

(b) Any permit suspended under § 904.310 will be reinstated by affirmative order of the Administrator; or

(c) Any application by the permit holder may be granted if the permit holder is otherwise qualified to receive the permit.

§§ 904.313-904.319 [Reserved]**Sanctions for Violations****§ 904.320 Nature of sanctions.**

Subject to the requirements of this Subpart, the Administrator may take any of the following actions or combination of actions if a permit holder or permitted vessel violates a statute administered by NOAA, or any regulation promulgated or permit condition prescribed thereunder:

(a) *Revocation.* A permit may be cancelled, with or without prejudice to issuance of the permit in the future. Additional requirements for issuance of any future permit may be imposed.

(b) *Suspension.* A permit may be suspended either for a specified period of time or until stated requirements are met, or both. If contingent on stated requirements being met, the suspension is with prejudice to issuance of the permit until the requirements are met.

(c) *Modification.* A permit may be modified, as by imposing additional conditions and restrictions. If the permit was issued for a foreign fishing vessel under section 204(b) of the Magnuson Fishery Conservation and Management Act, additional conditions and restrictions may be imposed on the application of the foreign nation involved and on any permits issued under such application.

§ 904.321 Reinstatement of permit.

(a) A permit suspended for a specified period of time will be reinstated automatically at the end of the period.

(b) A permit suspended until stated requirements are met will be reinstated only by affirmative order of the Administrator.

§ 904.322 Interim action.

(a) To prevent substantial harm to marine resources during the pendency of an action under this Subpart, or as otherwise required in the interest of public health, welfare, or safety, or in cases of willfulness, an Administrative Law Judge may order immediate suspension, modification, or withholding of a permit until a decision is made on the action proposed in a NOPS or NIDP.

(b) The Judge will order interim action under paragraph (a) only after finding that there exists probable cause to believe that the violation(s) charged in the NOPS or NIDP was committed. The Judge's finding of probable cause, which will be summarized in the order, may be made:

(1) After review of the factual basis of the alleged violation, following an opportunity for the parties to submit their views (orally or in writing, in the Judge's discretion); or

(2) By adoption of an equivalent finding of probable cause or an admission in any administrative or judicial proceeding to which the recipient of the NOPS or NIDP was a party, including, but not limited to, a hearing to arrest or set bond for a vessel in a civil forfeiture action or an arraignment or other hearing in a criminal action. Adoption of a finding or admission under this paragraph may be made only after the Judge reviews pertinent portions of the transcript or other records, documents, or pleadings from the other proceeding.

(c) An order for interim action under paragraph (a) of this section is unappealable and will remain in effect until a decision is made on the NOPS or NIDP. Where such interim action has been taken, the Administrator will expedite any hearing requested under § 904.305.

§§ 904.323-904.399 [Reserved]**PART 924—MONITOR MARINE SANCTUARY**

2. In § 924.6, paragraph (g) is revised to read as follows:

§ 924.6 Permit procedures and criteria.

(g) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

3. In § 924.8, paragraph (a) is revised to read as follows:

§ 924.8 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 924.6 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The appellant may request an informal hearing on the appeal.

PART 929—KEY LARGO NATIONAL MARINE SANCTUARY

4. In § 929.10, paragraph (h) is revised to read as follows:

§ 929.10 Permit procedures and criteria.

(h) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or Permittee has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or Permittee, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

5. In § 929.11, paragraph (a) is revised to read as follows:

§ 929.11 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, the applicant for a permit or the Permittee, or any other interested person (hereafter Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 929.10 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

PART 935—CHANNEL ISLANDS NATIONAL MARINE SANCTUARY

6. In § 935.9, paragraph (f) is revised to read as follows:

§ 935.9 Permit procedures and criteria.

(f) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

7. In § 935.11, paragraph (a) is revised to read as follows:

§ 935.11 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 935.9 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

PART 936—THE POINT REYES/FARALLON ISLANDS MARINE SANCTUARY REGULATIONS

8. In § 936.8, paragraph (f) is revised to read as follows:

§ 936.8 Permit procedures and criteria.

(f) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

9. In § 936.10, paragraph (a) is revised to read as follows:

§ 936.10 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 936.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

PART 937—THE LOOE KEY NATIONAL MARINE SANCTUARY REGULATIONS

10. In § 937.8, paragraph (g) is revised to read as follows:

§ 937.8 Permit procedures and criteria.

(g) The Administrator may suspend, revoke, modify, or deny a permit granted

or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

11. In § 937.10, paragraph (a) is revised to read as follows:

§ 937.10 Appeals from administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 937.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

PART 938—THE GRAY'S REEF NATIONAL MARINE SANCTUARY REGULATIONS

12. In § 938.8, paragraph (f) is revised to read as follows:

§ 938.8 Permit procedures and criteria.

(f) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

13. In § 938.10, paragraph (a) is revised to read as follows:

§ 938.10 Appeals from administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 938.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the

action(s) appealed, and the reasons hereof, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

Title 50—Wildlife and Fisheries

PART 215—PRIBILOF ISLANDS

14. In § 215.13, the introductory text of paragraph (d) is revised to read as follows:

§ 215.13 Procedures for the issuance, modification, suspension or revocation of permits.

(d) Except as provided in Subpart D of 15 CFR Part 904, any permit shall be subject to modification, suspension or revocation by the Director in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

15. Section 216.24 is amended by revising paragraph (b)(4), adding paragraph (c)(8), and removing paragraphs (d)(1)(vi), (d)(2)(viii), (d)(3)(vi), (d)(4)(vi), and (d)(5)(vi), to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

(b) ... (4) A general permit shall be valid for the time period indicated on the face of the permit. General permits may contain terms and conditions prescribed in accordance with sec. 104(b)(2) of the Act, 16 U.S.C. 1374(b)(2). General permits may be suspended, revoked, modified, or denied. Procedures governing permit sanctions or denials for reasons relating to enforcement are found at Subpart D of 15 CFR Part 904.

(c) ... (8) Failure to comply with provisions of the general permit, certificate, or these regulations may lead to suspension, revocation, modification, or denial of a certificate of inclusion. It may also subject the certificate holder, vessel, vessel owner, operator, or master to the penalties provided under the Act. Procedures governing permit sanctions

and denials are found at Subpart D of 15 CFR Part 904.

- (d) * * * (1) * * * (vi) [Removed] (2) * * * (viii) [Removed] (3) * * * (vi) [Removed] (4) * * * (vi) [Removed] (5) * * * (vi) [Removed]

16. In § 216.31, paragraph (c) is revised to read as follows:

§ 216.31 Scientific research permits and public display permits.

(c) Except as provided in Subpart D of 15 CFR Part 904, permits applied for under this section shall be issued, suspended, modified and revoked pursuant to regulations contained in § 216.33. In determining whether to issue a scientific research permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; and whether the granting of the permit is required to further a bona fide and necessary or desirable scientific purpose, taking into account the benefits anticipated to be derived from the scientific research contemplated and the effect of the proposed taking or importation on the population stock and the marine ecosystem. In determining whether to issue a public display permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; whether the marine mammal in question is from a species listed as depleted under § 216.15 of this part; whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking or importation on the population stocks of the marine mammal in question and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of the marine mammal or the marine mammal product, and the adequacy of his facilities.

PART 220—GENERAL PERMIT PROCEDURES

17. In § 220.21, paragraph (b)(1) is revised to read as follows:

§ 220.21 Issuance of permits.

(b) The Director shall issue the appropriate permit unless— (1) Denial of a permit has been made pursuant to Subpart D of 15 CFR Part 904;

- (2) * * * (3) * * * (4) * * * (5) * * *

18. Section 220.22 is revised to read as follows:

§ 220.22 Duration of permit.

Permits shall entitle the person to whom issued to engage in the activity specified in the permit, within the limitations of the applicable statute and regulations contained in Parts 217–222 of this chapter for the period stated on the permit, unless sooner modified, suspended, or revoked pursuant to Subpart D of 15 CFR Part 904.

PART 222—ENDANGERED FISH OR WILDLIFE

19. Section 222.11–7 is revised to read as follows:

§ 222.11–7 Procedures for suspension, revocation, or modification of certificates of exemption.

Any violation of the applicable provisions of Parts 217–222 of this chapter, or of the Act, or of a condition of the certificate of exemption may subject the certificate holder to the following:

- (a) The penalties provided in the Act; and (b) Suspension, revocation, or modification of the certificate of exemption, as provided in Subpart D of 15 CFR Part 904.

20. In § 222.24, paragraph (c) is revised to read as follows:

§ 222.24 Procedures for issuance of permits.

(c) Except as provided in Subpart D of 15 CFR Part 904, as soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Director shall issue or deny issuance of the permit. Notice of the decision of the Director shall be published in the Federal Register within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

21. Section 222.27 is revised to read as follows:

§ 222.27 Procedures for suspension, revocation, or modification of certificates of exemption.

Any violation of the applicable provisions of Parts 217-222 of this chapter, or of the Act, or of a condition of the certificate of exemption may subject the certificate holder to the following:

(a) The penalties provided in the Act; and

(b) Suspension, revocation, or modification of the certificate of exemption, as provided in Subpart D of 15 CFR Part 904.

PART 285—ATLANTIC TUNA FISHERIES

22. In § 285.21, paragraphs (d)(1) and (j) are revised to read as follows:

§ 285.21 Vessel permits.

(d) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(j) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought pursuant to this section. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

23. In § 285.22, paragraphs (c)(1) and (i) are revised to read as follows:

§ 285.22 Dealer permits.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director shall issue a permit within 30 days of receipt of a completed application.

(i) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought pursuant to this section. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 611—FOREIGN FISHING

24. In § 611.3, paragraph (g) is revised to read as follows:

§ 611.3 Permits for foreign fishing vessels.

(g) The Assistant Administrator may suspend, revoke, modify, or deny a permit issued under paragraph (c) of this section. Procedures governing permit sanctions and denials for reasons relating to enforcement are found at Subpart D of 15 CFR Part 904.

PART 621—CIVIL PROCEDURES

25. Subpart D, consisting of §§ 621.51 through 621.56, is removed and the subpart is reserved.

Subpart D—[Reserved]

§§ 621.51 through 621.56 [Removed]

PART 649—AMERICAN LOBSTER FISHERY

26. In § 649.4, paragraphs (c)(1), (e), and (j) are revised to read as follows:

§ 649.4 Vessel permits.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit within 30 days.

(2) * * *

(e) *Duration.* A Federally-issued permit is valid until it expires or is revoked, suspended, or modified under Subpart D of 15 CFR Part 904.

(j) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 650—ATLANTIC SEA SCALLOP FISHERY

27. In § 650.4, paragraphs (c)(1), (e), and (j) are revised to read as follows:

§ 650.4 Vessel permits.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a completed application, the Regional Director must issue a permit within 30 days.

(2) * * *

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(j) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 651—ATLANTIC GROUND FISH (COD, HADDOCK, AND YELLOWTAIL FLOUNDER)

28. In § 651.4, paragraphs (c)(1), (e), and (j) are revised to read as follows:

§ 651.4 Vessel permits.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a completed application, the Regional Director will issue a permit within 30 days.

(2) * * *

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(j) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

29. In § 652.4, paragraphs (d) and (i) are revised to read as follows:

§ 652.4 Permits.

(d) *Issuance.* Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit to each eligible vessel for which an application is submitted. The eligibility of a vessel to fish for surf clams will be determined consistent with this section. There will be no fee for the permit.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 655—ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

30. In § 655.4, paragraphs (e), (g), and (j) are revised to read as follows:

§ 655.4 Vessel permits and fees.

(e) *Issuance.* Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a completed application, the Regional Director will issue a permit within 30 days.

(g) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(j) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 672—GROUND FISH OF THE GULF OF ALASKA

31. In § 672.4, paragraphs (c)(1), (e), and (i) are revised to read as follows:

§ 672.4 Permits.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a properly completed application, the Regional Director will issue a permit.

(2) * * *

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA

32. In § 674.4, paragraph (b)(3)(i) is revised and new paragraph (b)(6) is added to read as follows:

§ 674.4 Permits.

(b) * * *

(3) *Issuance.* (i) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a properly completed application and any document required under paragraph (b)(2)(iv), the Regional Director will promptly determine whether permit eligibility conditions have been met, and if so, will issue a permit. If the permit is denied, the Regional Director will notify the

applicant in accordance with paragraph (d) of this section.

(ii) * * *

(6) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS

33. In § 675.4, paragraphs (c)(1), (e), and (i) are revised to read as follows:

§ 675.4 Permits.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a properly completed application, the Regional Director will issue a permit required by paragraph (a) of this section.

(2) * * *

(e) *Duration.* A permit issued under this section shall authorize the permitted vessel to fish for groundfish in the Bering Sea and Aleutian Islands management area during a single specified year, and shall continue in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified pursuant to Subpart D of 15 CFR 904.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 680—WESTERN PACIFIC PRECIOUS CORALS

34. In § 680.4, paragraph (l) is revised to read as follows:

§ 680.4 Permits

(l) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 681—WESTERN PACIFIC SPINY LOBSTER FISHERIES

35. In § 681.4, paragraph (l) is revised to read as follows:

§ 681.4 Permits

(l) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

Authority: Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g; Endangered Species Act of 1973, 16 U.S.C. 1531-43; Fur Seal Act of 1966, 16 U.S.C. 1158 *et seq.*; Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407; Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-34; Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k.

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