Department of Commerce $ National Oceanic & Atmospheric Administration $ National Marine Fisheries Service

NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 01-108-01
JULY 29, 1998

Fisheries Management
Exempted Fishing, Scientific Research Permits, and Letters of Acknowledgment

PROCEDURES FOR IMPLEMENTATION OF THE RULE DEFINING SCIENTIFIC RESEARCH, EXEMPTED FISHING, AND EXEMPTED EDUCATIONAL ACTIVITIES

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SUMMARY OF REVISIONS:

Signed _____
[Approving Authority name] Date
[Approving Authority title]

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1335 East-West Highway
Silver Spring, MD 20910
THE DIRECTOR

JUL 29 1998

MEMORANDUM FOR: Regional Administrators
F/SF - Gary C. Matlock

FROM: Rolland A Schmitten

SUBJECT: Procedures for Implementation of the Rule Defining Scientific Research, Exempted Fishing, and Exempted Educational Activities

This memorandum establishes standard agency procedures for recognizing the conduct of scientific research and issuing permits for exempted (experimental) fishing and exempted educational activities as those activities apply to the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and to the Atlantic Tunas Convention Act, the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), and the Atlantic Striped Bass Conservation Act (termed "other fisheries laws" for the purposes of this memorandum). These procedures apply only to activities conducted within the U.S. Exclusive Economic Zone (EEZ) for species regulated by the Magnuson-Stevens Act, ACFCMA, and the Atlantic Striped Bass Conservation Act, and within the regulatory area (the Atlantic Ocean and adjacent seas) of ATCA for species regulated by ATCA. This memorandum supersedes, in its entirety, guidance on issuance of experimental fishing permits and letters of authorization in the Assistant Administrator's memorandum of December 31, 1992. These procedures are effective as of the date of this memorandum.

BACKGROUND

In its initial deliberations on the Fishery Conservation and Management Act (now the Magnuson-Stevens Act) in 1976, Congress chose to exempt scientific research conducted by a scientific research vessel from the definition of "fishing." To standardize the process for dealing with scientific research by foreign vessels, the foreign fishing regulations provided that scientific research cruises be authorized by the Center Director. Recognizing that scientific research conducted from scientific research vessels is unregulated under the Magnuson-Stevens Act, procedures evolved to provide domestic researchers with letters of authorization or letters of acknowledgment (LOAs). However, these letters followed no specific format and were subject to misinterpretation and abuse, resulting in several enforcement cases, some involving NOAA personnel. Similarly, experimental (now called exempted) fishing permit (EFP) procedures varied widely, depending on the fishery being regulated, and did not always provide for adequate public input or scrutiny.

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

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NMFS has been working on resolving these longstanding issues for some time. On December 31, 1992, the Assistant Administrator issued a memorandum requiring headquarters level review of LOAs and experimental (exempted) fishing applications. Decision memoranda and determinations about the applicability of other laws were required to be submitted to the Office of Conservation and Management (now the Office of Sustainable Fisheries). The memo also set in motion changes to the foreign and domestic fishing regulations to address these issues.

Based on needs identified by the Department of Commerce Inspector General, NMFS conducted a management control review (MCR) on the scientific research and experimental fishing permitting process. This MCR, completed in September 1995, included conclusions and recommendations for improvement of NMFS' process, as follows:

(1) Determine a policy on the disposition of catch (i.e., sale) taken in scientific research;

(2) Better control the conduct of scientific research, including the take of depressed stocks, endangered species, and marine mammals through adequate research plans, especially as they apply to NMFS-funded research;

(3) Consistently define "scientific research which is conducted by a scientific research vessel";

(4) Consistently require and track review of LOAs and EFPs at the headquarters and/or regional level;

(5) Standardize and streamline review of LOAs;

(6) Standardize and streamline review of EFPs;

(7) Better record the receipt of applications and issuance of LOAs/EFPs; and

(8) Standardize reporting requirements (or requests in the case of LOAs) for LOAs/EFPs.

In a memorandum forwarded by me on April 16, 1996, the Department of Commerce Assistant General Counsel for Administration provided guidance to NMFS concerning accepting public support for NMFS operations. This memo specifically discussed the acceptance of donations for and support from persons or groups in the commercial fishing industry for the conduct of research operations.

To help resolve these issues, NMFS issued regulations at 61 FR 26435, May 28, 1996, addressing scientific research, exempted fishing, and exempted educational activities. The regulations defined scientific research (MCR Conclusion (3)), asked for research plans as part of a request for an LOA (MCR Conclusion (2)), established national procedures for obtaining LOAs and EFPs (MCR Conclusions (5) and (6)), and required reports (requested reports in the case of LOAs) from LOA and EFP holders (MCR Conclusion (8)). The regulations were consolidated into 50 CFR Part 600 at 61 FR 32538, June 24, 1996.

Effective October 11, 1996, Congress amended the Magnuson-Stevens

Act through the Sustainable Fisheries Act (SFA). These amendments provided a definition for commercial fishing, which included harvesting fish that "are intended to enter commerce or enter commerce through sale, barter or trade." Also included were provisions specifically authorizing the use of private vessels for resource surveys, and allowing compensation for such activity through retention and selling of fish harvested during the survey or the retention and selling of fish harvested subsequent to the survey. NMFS has published national standard guidelines implementing changes under the SFA into Magnuson-Stevens Act guidance at 63 FR 24212, May 1, 1998. One revision to these guidelines is the explicit inclusion of research catches in the calculation of total annual removals for estimating total mortality in the stock assessment for deriving optimum yield.

CHANGES FROM PRIOR REGULATIONS AND GUIDANCE

This memorandum and attachments supplement applicable regulations by providing internal procedures for administering those requirements. It addresses the MCR conclusions dealt with in the regulations with respect to internal NMFS procedures, and addresses the other conclusions directly. Changes to the Magnuson-Stevens Act by the SFA that impact these procedures are also addressed.

A substantial amount of scientific research cruises directed at marine fishery resources is done by NMFS on NOAA vessels, chartered vessels, or vessels whose research activity is otherwise directed by NMFS. Because NMFS has the principal responsibilities within NOAA for the stewardship of marine fishery resources in the EEZ and under other fisheries laws, NMFS has legal responsibilities for fishery research activities. The MCR in conclusions (2), (4), and (5) recommended strengthening the review of research and tracking LOAs. Attachment 1, therefore, clarifies previous guidance by providing a separate procedure for research controlled by NMFS, including activities that could fall under applicable definitions of fishing, particularly with regard to the National Environmental Policy Act (NEPA) requirements.

The regulations at 50 CFR 600.512 and 600.745(a) (See Attachment 1) provide standards for consideration of scientific research plans and issuance of LOAs. Because scientific research conducted by a scientific research vessel as defined by 50 CFR 600.10 is <u>not</u> regulated under the Magnuson-Stevens Act, LOAs cannot be required, making regulations applicable to scientific research under that Act very limited. Obtaining an LOA will, however, provide a vessel with a presumption that it is engaged in scientific research activity and, therefore, it will be much less likely to have its research interrupted by boardings and enforcement delays. Under these revised procedures, it will no longer be necessary to clear LOAs through Headquarters (F/SF).

Further, the authority to issue LOAs and scientific research permits (SRPs) for non-NMFS research can be assigned to the Science and Research Director, Deputy Regional Administrator, an Assistant Regional Administrator, or other person acting in one of those capacities. SRPs for NMFS research can only be issued by the Regional Administrator, Deputy Regional Administrator, an Assistant Regional Administrator, or other person acting in one of those capacities.

Because scientific research is not exempt from regulation under ATCA, regulations implemented under the authority of that Act will be revised to reflect that the research procedures recommended at 50 CFR 600.745(a) are mandatory. Similarly, the other fisheries laws do not exempt scientific research. A procedure for issuing SRPs under other fisheries laws, similar to the procedures for SRPs under the Magnuson-Stevens Act, is specified in this memorandum. Exempted fishing permitting and exempted educational activity procedures under the other fisheries laws are identical to those under the Magnuson-Stevens Act.

Since under the Magnuson-Stevens Act scientific research activity by a scientific research vessel is not "fishing," it has been determined that sale of fish taken and retained during scientific research activity is not fishing or commercial fishing as defined by the Magnuson-Stevens Act. Similarly, the sale of such fish does not change the scientific activity to fishing. However, fishing independent of actual scientific research activity, as compensation for the use of the vessel, falls under the EFP provisions. This compensation fishing is distinguished from research and, by selling the catch, that operation becomes commercial fishing.

FUTURE ACTIONS

The provisions of 50 CFR part 600 and these procedures represent the minimum requirements necessary for effective management and enforcement of fishing activities, EFPs, and EEAs. Specific regulations currently in place generally supersede these general exempted fishing procedures until they are removed or modified. Future fishery-specific regulations may either remove current exempted (experimental) fishing procedures, making 50 CFR 600.745 the only authority for exempted fishing, or refer to them. The Councils may recommend additional restrictions or procedures, consistent with these regulations, if there is justification for doing so. Consult with the regional General Counsel's office to determine the type of rulemaking required for any additional restrictions or procedures.

The next step is for you to request the Council(s) in your area of responsibility to review their FMPs and to initiate any necessary fishery management plan (FMP) amendments or complete

regulatory amendments within 1 year from the date of this memo, as necessary, to ensure their FMPs and regulations conform to the NMFS regulations at 50 CFR 600.745. FMPs should either explicitly provide for or prohibit exempted fishing and exempted educational activities. These procedures are already in effect if your Region's consolidated regulations refer to them explicitly, if the regulations give the Region or NMFS a generic authority to issue exemptions, or if the regulations are silent regarding exempted fishing or exempted educational activities, in which case the 50 CFR part 600 procedures apply.

Attachments

(1 PROCEDURES FOR ISSUANCE OF LOAs, SRPs, EFPs AND EXEMPTED EDUCATIONAL ACTIVITIES (EEAs) UNDER THE MAGNUSON-STEVENS AND OTHER FISHERIES LAWS
(2) EXCERPTS FROM FEDERAL REGISTER 61 FR 32538, JUNE 24, 1996
(3) MAJOR ELEMENTS OF SCIENTIFIC RESEARCH, EXEMPTED FISHING, EXEMPTED EDUCATIONAL ACTIVITIES REGULATIONS
(4) SAMPLE LOA (BASIC)
(5) SAMPLE LOA (WHERE CONCERNS EXIST WITH THE RESEARCH)
(6) SAMPLE SRP FOR A NMFS/NOAA CONTROLLED VESSEL
(7) DOCUMENTS APPROPRIATE FOR VARIOUS ACTIVITIES UNDER THE MAGNUSON-STEVENS ACT OR OTHER FISHERIES LAWS

cc: Office Directors
Science Directors
Assistant General Counsel for Fisheries
Assistant General Counsel for Enforcement & Litigation

ATTACHMENT 1

PROCEDURES FOR ISSUANCE OF LOAs, SRPs, EFPs AND EXEMPTED EDUCATIONAL ACTIVITIES (EEAs) UNDER THE MAGNUSON-STEVENS ACT AND OTHER FISHERIES LAWS

WHEN DOCUMENTS ARE NEEDED

These procedures concern activities involving marine fishery resources within the U.S. Exclusive Economic Zone (EEZ) for species regulated by the Magnuson-Stevens Act, ACFCMA, and the Atlantic Striped Bass Conservation Act, and within the regulatory area (the Atlantic Ocean and adjacent seas) of ATCA for species regulated by ATCA. Fishing or research activities documentation under these procedures applies only when the activities to be conducted would be in violation of existing laws and regulations. Documentation is advisable for any research activity that could meet the definition of fishing. Activities conducted consistent with existing regulations need no special letters or permits. However, fishing activities inconsistent with existing laws or regulations require special authorization.

AUTHORITY TO ISSUE DOCUMENTS

As allowed by 50 CFR 600.512(a) for foreign vessels and 600.745(a) for domestic vessels, the Regional Administrator (RA) may assign to the Science and Research Director, the Deputy RA, the Deputy Science and Research Director, or an Assistant Regional Administrator the authority to issue some or all Letters of Acknowledgment (LOAs) or Scientific Research Permits (SRPs) for non-NMFS research. The RA may not reassign to the Science and Research Director the authority to issue SRPs for NMFS research. A signed copy of any authorization letter must be forwarded to the Assistant Administrator (AA) and the Director of the Office of Sustainable Fisheries (Director) upon signature.

RECORD KEEPING

Each Region and the Director shall maintain a central file of all LOAs, SRPs, Exempted Fishing Permits (EFPs), and Exempted Educational Activity Authorizations (EEAs) issued or granted by the Region/Director for at least 3 years. This file or the information contained in this file must be accessible to enforcement personnel on a 24-hours-a-day basis. A computer data base of acknowledged/permitted vessels/permittees accessible to enforcement may substitute for 24-hour access.

REPORTS

Persons conducting scientific research (50 CFR 600.512(b) for foreign vessels and 50 CFR 600.745(c)(1) for domestic vessels are

requested to report their catch. Persons conducting EFPs are required by 50 CFR 600.745(c)(1) or specific EFP regulations for their fishery to report their catch. The RA/Director will limit the allowed catch in EEAs using the provisions of 50 CFR 600.745(d)(3)(ii)(A). Because all fishing mortality will be considered in determining the OY under the proposed national standard guidelines, this mortality information becomes increasingly important. Researchers should be strongly encouraged to submit reports of their catch. These catches, together with required documentation from EFPs and EEAs, should be provided expeditiously to the office documenting the catch in the fishery.

ISSUANCE OF LETTERS OF ACKNOWLEDGMENT OF SCIENTIFIC RESEARCH (LOAs) UNDER THE MAGNUSON-STEVENS ACT

A LOA will be issued only for non-NMFS controlled activities conducted under the Magnuson-Stevens Act. A non-NMFS controlled activity is one when neither the vessel nor the research activity on board is controlled by either NMFS or NMFS contracted personnel. Upon receipt of a scientific research plan and/or other information provided by the applicant, the RA/Director shall issue a LOA to the applicant (owner/master of the vessel or sponsoring institution) (Attachment 4). The RA/Director may review the applicant's information and determine whether the activity appears to be scientific research, whether it may have an adverse impact upon marine mammals or protected resources, and whether it is consistent with other applicable law. Applicants using NOAA-funded grants to conduct all or part of the research should provide the NOAA award number as part of the research plan to further identify the research and assist in tracking NOAA-funded research projects. If the RA/Director determines that the activity may constitute fishing, requires a permit or incidental take authorization, or may violate a law, the RA/Director will issue a second letter to the applicant identifying the concerns and, where appropriate, recommending changes to the research plan or other actions that will allow the research to proceed. The second letter shall also advise the applicant that the presumption that the activity is research may be lost or the applicant may be subject to more serious penalties if the concerns of the letter are not addressed. Where no significant delay will be caused, the review of the application may be conducted prior to issuing the LOA, and the two letters may be combined (Attachment 5). The RA/Director will ensure that enforcement and the U.S. Coast Guard are advised of all issued LOAs and letters to applicants about concerns with their research.

ISSUANCE OF SCIENTIFIC RESEARCH PERMITS (SRPs) UNDER OTHER FISHERIES LAWS

Scientific research is not exempt from regulation under the other

fisheries laws, as it is under the Magnuson-Stevens Act. Research that takes fish regulated under these laws must conform with the experimental fishing exemption regulations issued under those laws. Current ATCA regulations appear at 50 CFR 285.7. These will be consolidated as part of a revised 50 CFR part 630. Regulations issued for ACFCMA and Atlantic Striped Bass Act fisheries appear at 50 CFR part 697. These procedures may be used to authorize scientific research activities for the purposes of those regulations, by issuing a SRP.

Prior to issuance of an SRP under any other fisheries laws, the RA or Chief of the Highly Migratory Species Division (F/SF1) will submit to the Director a decision memorandum in which all necessary determinations are made (including any determinations dealing with marine mammals and section 7 of the Endangered Species Act (ESA)), the draft research permit, and a copy of the submitted research plan. Applicants who are using NOAA-funded grants to conduct all or part of the research should provide the NOAA award number as part of the research plan to further identify the research and assist in tracking NOAA-funded research projects. The Director will review each request to ensure the SRP is consistent with the applicable regulations, national policy, and other applicable law. If the Director determines that there may be an impact from the activity, he or she will notify the applicant of the inconsistencies and offer the applicant the opportunity to take actions necessary to comply with laws or policies in question. After the Director or designee is satisfied that these requirements have been met, he or she may issue the SRP.

ISSUANCE OF SRPs FOR NMFS CONTROLLED ACTIVITIES UNDER THE MAGNUSON-STEVENS ACT OR OTHER FISHERIES LAWS

SRPs are required for all NMFS research conducted from NOAA vessels and NMFS chartered vessels operating under contracts, or other approved agreements conducting scientific research activity in the EEZ that would otherwise meet the definition of fishing under the Magnuson-Stevens Act or other fisheries laws. To obtain a SRP from RA/Director, the NMFS research entity planning to conduct a scientific research activity as defined in 50 CFR 600.745(a) must submit a scientific research plan containing the same information as required for a LOA. Prior to issuance of any SRP for NMFS controlled scientific research, the RA or Chief of the Highly Migratory Species Division (F/SF1) will review the scientific research plan to ensure the research is adequately described, and to make necessary determinations (including any determinations dealing with marine mammals and section 7 of the ESA) to ensure the scientific research plan is consistent with the applicable regulations, national policy, and other applicable law. The determinations shall include the appropriate NEPA statement, generally a categorical exclusion, if supported by the facts. After the RA is satisfied that these requirements have

been met, the RA may issue the SRP. Prior to issuance of any Other fisheries laws SRP, the Chief of the Highly Migratory Species Division (F/SF1) will submit to the Director a decision memorandum in which all necessary determinations are made for the Director's concurrence and granting of the SRP. A sample SRP is included as Attachment 6. The RA/Director may issue an SRP for multiple cruises when appropriate documentation is provided and after the RA/Director has made the appropriate determinations. For the purpose of documenting categorical exclusions under NEPA, the RA/Director will forward a copy of any SRP issued and its associated determinations through the Director to the NOAA Office of Policy and Strategic Planning (OPSP). The Director will forward copies of Other fisheries laws SRPs to OPSP. A copy of the SRP and the scientific research plan shall be maintained on board the scientific research vessel for the duration of the scientific research activity.

ISSUANCE OF EXEMPTED FISHING PERMITS (EFPs)

An EFP is required for any fishing that would otherwise be in violation of the Magnuson-Stevens Act or other fisheries laws or their implementing regulations, and is not considered part of an exempted educational activity. Further, an EFP is required when otherwise prohibited fishing is authorized for a vessel as compensation for conducting a NMFS contracted resource survey (compensation fishing).

Public Notice.

A Federal Register notice of receipt and intent to issue EFPs is required by the regulations (50 CFR 600.745(b)(3)(i)). The Region may comply by submitting a notice to the Director for publication, or requesting the appropriate Council to add the notification as part of a Council meeting notice, when a Council intends to review EFP applications. Similarly, announcements for highly migratory species advisory panel meetings may include notifications of potential EFPs. The Federal Register notice must include a short summary of the EFP proposal or application that includes amounts and species allowed to be caught under the EFP. A summary of the potential effect of the EFP on target/incidental species, endangered species, marine mammals, and the specific regulations to be exempted, as described in the regulations cited above, may also be included. Specific vessels or an estimated number of vessels participating in the EFP should be provided when available. When a formally submitted EFP is substantially changed from its original form, is denied, or a previously denied EFP is resubmitted, another Federal Register notice is appropriate.

Non-controversial EFPs

Prior to issuance of an EFP, the RA will submit to the Director a

decision memorandum in which all necessary determinations are made (including any determinations dealing with marine mammals, section 7 of the ESA, fisheries habitat, and the appropriate NEPA statement and/or documents), together with the proposed EFP and the conditions and restrictions of the EFP, and a copy of the application. The Director will review each application to ensure the EFP is consistent with the applicable regulations, national policy, and other applicable law. After consultation and concurrence from the Director, the RA/Director may issue the EFP. The Director will notify the AA of concurrence with the EFP by providing the AA a copy of the signed decision memorandum indicating the Director's concurrence within 5 working days of the Director's concurrence.

Controversial EFPs

If the RA determines that written objections to a request are likely, or that an application is controversial, the RA will submit the decision memorandum described above for the concurrence of the AA, via the Director. If the RA does not indicate that an application is controversial, but the Director, after consultation with the Region, determines that the application is controversial or is likely to elicit negative correspondence, the Director will consult with and obtain the concurrence of the AA prior to issuance of an EFP by the Regional Office.

Emergency EFPs

An EFP issued for health and safety, environmental cleanup, or hazard removal does not require Headquarters concurrence prior to being issued. The Regional Administrator shall forward an information memorandum to the Director along with a draft of the Federal Register notice summarizing the EFP and requesting comments. The Regional Administrator may combine both the information memorandum and the Federal Register notice with other documents submitted in dealing with the emergency (i.e., a Federal Register notice closing a portion of a fishery due to pollution).

EFPs for Compensation Fishing

An EFP is required for compensation fishing. Compensation fishing is fishing that would otherwise be prohibited or for which special provisions are necessary that is provided as compensation for collecting resource information, including conducting a resource survey, authorized by NMFS through a competitive process. The EFP would not include any fish taken during that resource survey. Compensation fishing must be conducted on a separate voyage from the resource survey. The Federal Register notice published to announce the EFP may also serve to announce the request for bidders on associated

contracts. Neither the notice nor the decision memorandum need to identify individual vessels when that information is unavailable; however, the EFP should be cleared in sufficient time to have it in place of the beginning of the contract.

Observer Programs

A fishing vessel with a NMFS or NMFS-contracted observer on board is not required to have a LOA, SRP, EFP, or EEA for the sampling activities conducted by the observer. NMFS observer programs are distinguished from other NMFS activities in that they are long-term data collection programs often specifically required by law, regulations, or both. The protocols for collection activities under these programs are established and reviewed in advance. Based on such prior approval of the observer program, NMFS or NMFS-contracted observers may take and retain scientific samples that would not otherwise be in accordance with the regulations for the fishery in which the vessel is engaged, provided the samples are taken according to NMFS-approved protocols.

Non-NMFS observer programs must have an EFP to collect and retain specimens of otherwise prohibited fish caught by a fishing vessel, including retaining parts of fish that are required to be returned to the sea with a minimum of harm (prohibited species). Non-NMFS observer programs are typically sponsored or contracted by a state agency, marine fisheries commission, or other entity for long-term data collection.

Rationale: As the activity of the vessels involved is not controlled by a research organization, the activity cannot be considered to be scientific research. Consequently, the vessel cannot be issued either a LOA or SRP. Each observer program must obtain an annual or project-specific EFP (as appropriate) based on the data collection and sampling protocols to be in place for the observers. Once issued, each observer must have a copy of the EFP, together with the specific sampling protocols authorized, in that person's possession on board the fishing vessel.

Vessel-of-Opportunity Programs.

Vessel-of-opportunity programs (either NMFS, NMFS-contracted, or non-NMFS sponsored programs) must have an EFP or EEA to collect and retain specimens of otherwise prohibited fish caught by a fishing vessel, including retaining parts of fish that are required to be returned to the sea with a minimum of injury (prohibited species). A fishing vessel of opportunity is a fishing vessel conducting routine fishing operations that has a researcher, educator and/or student(s) on board to sample/retain catch during the vessel's operations. The rationale for non-NMFS observer programs requiring permits applies to vessel-of-opportunity programs as well. Each vessel-of-opportunity program

must obtain an annual or project-specific EFP/EEA (as appropriate) based on the data collection and sampling protocols to be in place for the observers. Once issued, each researcher or recipient of an EEA must have a copy of the EFP/EEA, together with the specific sampling protocols authorized, in that person's possession on board the fishing vessel.

ISSUANCE OF EXEMPTED EDUCATIONAL ACTIVITY AUTHORIZATIONS (EEAs)

An EEA is required for fishing that would otherwise be in violation of the Magnuson-Stevens Act or Other fisheries laws that is part of an activity conducted by an educational institution for educational purposes. These authorizations are meant to have limited scope in amounts of fish taken, geographic extent, and time frames (i.e., an EEA for a professor and students to take samples for the duration of a course and bring them back to the educational institution for further study. Fish obtained under an EEA are prohibited from being sold, bartered or traded (50 CFR 600.725(n)). The RA/Director should view EEAs narrowly and use EFPs or LOAs/SRPs because of their more varied range of options in the disposition of catch. The RA/Director, after review of each application to ensure it is consistent with the applicable regulations, national policy, and other applicable law, may issue EEAs without further clearance.

PUBLIC DISPLAY

Collecting fish for public display requires an EFP (50 CFR 600.745(b)(1)). However, in many instances fish collected during an EEA are brought back to the institution for study and subsequent display. For the purposes of determining if the activity is public display, if the permittee will be retaining the fish and placing it on display for a fee, the activity is considered fishing and requires an EFP. This ensures specimen collecting is regularized and the public is provided an opportunity to review and comment on such activities.

response, and (5) joint venture logs estimated at 0.5 hour per response; and gear avoidance and disposal (1) gear conflicts estimated at 0.2 hour per response, and (2) disposal estimated at 0.2 hour per response.

(c) *Approved under 0648-0306*—Vessel identification requirements estimated at 35 minutes per response.

(d) *Approved under 0648-0305*—Gear identification requirements estimated at 30 minutes per response.

Collection-of-Information Requirements Submitted for Approval

(e) *Approved under 0648-0309*—Scientific research activity and exempted fishing (1) 1 hour per response to send NMFS a copy of a scientific research plan and provide a copy of the cruise report or research publication, (2) 1 hour per response to complete an application for an exempted fishing permit or authorization for an exempted educational activity, and (3) 1 hour per response to collect information and provide a report at the conclusion of exempted fishing.

The following collection-of-information requirements have been approved by OMB:

(a) *Principal state officials and their designees*—Estimated at 15 hours per response (OMB control number 0648-0314).

(b) *Council appointments*—Estimated at 120 hours per appointment (30 appointments required)(OMB control number 0648-0314).

(c) *Application for reinstatement of State authority*— Estimated at 2 hours per response (OMB control number 0648-0314).

The estimated response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Parts 600, 602, and 620

Fisheries, Fishing.

50 CFR Part 601

Administrative practice and procedure, Fisheries, Fishing.

50 CFR Part 603

Confidential business information, Fisheries, Statistics.

50 CFR Part 605

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 619

Administrative practice and procedure, Fisheries, Fishing, Intergovernmental relations.

50 CFR Part 621

Fisheries, Fishing, Fishing vessels, Penalties.

Dated: June 14, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and, under the authority of 16 U.S.C., 1801 *et seq.*, 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by removing in the left column under 50 CFR, the entries "601.37", "611.3", "611.4", "611.5", "611.6", "611.8", "611.9", "611.12", "611.14", "611.50", "611.61", "611.70", "611.80", "611.81", "611.82", "611.90", "611.92", "611.93", "611.94", and "620.10", and by removing in the right column the control numbers in corresponding positions; and by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
600.205	–0314
600.215	–0314
600.235	–0192
600.501	–0089
600.502	–0075
600.503	–0305 and –0306
600.504	–0075
600.506	–0075
600.507	–0075
600.510	–0075
600.512	–0309
600.520	–0075
600.630	–0314

* * * * *

50 CFR CHAPTER VI

3. Part 600 is revised to read as follows:

PART 600—MAGNUSON ACT PROVISIONS

Subpart A—General

Sec.
600.5 Purpose and scope.
600.10 Definitions.
600.15 Other acronyms.

Subpart B—Regional Fishery Management Councils

600.105 Intercouncil boundaries.
600.110 Intercouncil fisheries.
600.115 Statement of organization, practices, and procedures (SOPP).
600.120 Employment practices.
600.125 Budgeting, funding, and accounting.
600.130 Protection of confidentiality of statistics.

Subpart C—Council Membership

600.205 Principal state officials and their designees.
600.210 Terms of council members.
600.215 Appointments.
600.220 Oath of office.
600.225 Rules of conduct.
600.230 Removal.
600.235 Financial disclosure.
600.240 Security assurances.
600.245 Council member compensation.

Subpart D—National Standards

600.305 General.
600.310 National Standard 1—Optimum Yield.
600.315 National Standard 2—Scientific Information.
600.320 National Standard 3—Management Units.
600.325 National Standard 4—Allocations.
600.330 National Standard 5—Efficiency.
600.335 National Standard 6—Variations and Contingencies.
600.340 National Standard 7—Costs and Benefits.

Subpart E—Confidentiality of Statistics

600.405 Types of statistics covered.
600.410 Collection and maintenance of statistics.
600.415 Access to statistics.
600.420 Control system.
600.425 Release of statistics.

Subpart F—Foreign Fishing

600.501 Vessel permits.
600.502 Vessel reports.
600.503 Vessel and gear identification.
600.504 Facilitation of enforcement.
600.505 Prohibitions.
600.506 Observers.
600.507 Recordkeeping.
600.508 Fishing operations.
600.509 Prohibited species.
600.510 Gear avoidance and disposal.
600.511 Fishery closure procedures.
600.512 Scientific research.
600.513 Recreational fishing.
600.514 Relation to other laws.
600.515 Interpretation of 16 U.S.C. 1857(4).
600.516 Total allowable level of foreign fishing (TALFF).
600.517 Allocations.
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Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General

600.5 Purpose and scope.

(a) This part contains general provisions governing the operation of the eight Regional Fishery Management Councils established by the Magnuson Act and describes the Secretary's role and responsibilities under the Act. The Councils are institutions created by Federal law and must conform to the uniform standards established by the Secretary in this part.

(b) This part also governs all foreign fishing under the Magnuson Act, prescribes procedures for the conduct of preemption hearings under section 306(b) of the Magnuson Act, and collects the general provisions common to all domestic fisheries governed by this chapter.

§ 600.10 Definitions.

Unless defined otherwise in other parts of Chapter VI, the terms in this chapter have the following meanings:

Administrator means the Administrator of NOAA (Under Secretary of Commerce for Oceans and Atmosphere) or a designee.

Advisory group means a Scientific and Statistical Committee (SSC), Fishing Industry Advisory Committee (FIAC), or Advisory Panel (AP) established by a Council under the Magnuson Act.

Agent, for the purpose of foreign fishing (subpart F), means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner and/or operator of a vessel operating under a permit and of any other vessel of that Nation fishing subject to the jurisdiction of the United States. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with such process.

Aggregate or summary form means confidential data structured in such a way that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

Allocated species means any species or species group allocated to a foreign nation under § 600.517 for catching by vessels of that Nation.

Allocation means direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals.

Anadromous species means species of fish that spawn in fresh or estuarine waters of the United States and that migrate to ocean waters.

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the USCG;

(2) Any special agent or fishery enforcement officer of NMFS;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary and the Commandant of the USCG to enforce the provisions of the Magnuson Act or any other statute administered by NOAA; or

(4) Any USCG personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Authorized species means any species or species group that a foreign vessel is authorized to retain in a joint venture by a permit issued under Activity Code 4 as described by § 600.501(c).

Catch, take, or *harvest* includes, but is not limited to, any activity that results in killing any fish or bringing any live fish on board a vessel.

Center means one of the five NMFS Fisheries Science Centers.

Coast Guard Commander means one of the commanding officers of the Coast Guard units specified in Table 1 of § 600.502, or a designee.

Codend means the terminal, closed end of a trawl net.

Confidential statistics are those submitted as a requirement of an FMP and that reveal the business or identity of the submitter.

Continental shelf fishery resources means the species listed under section 3(4) of the Magnuson Act.

Council means one of the eight Regional Fishery Management Councils established by the Magnuson Act.

Data, statistics, and *information* are used interchangeably. Dealer means the person who first receives fish by way of purchase, barter, or trade.

Designated representative means the person appointed by a foreign nation and maintained within the United States who is responsible for transmitting information to and submitting reports from vessels of that Nation and establishing observer transfer arrangements for vessels in both directed and joint venture activities.

Directed fishing, for the purpose of foreign fishing (subpart F), means any fishing by the vessels of a foreign nation for allocations of fish granted that Nation under § 600.517.

Director means the Director of the Office of Fisheries Conservation and Management, 1315 East-West Highway, Silver Spring, MD 20910.

Discard means to release or return fish to the sea, whether or not such fish are brought fully on board a fishing vessel.

Drift gillnet means a gillnet that is unattached to the ocean bottom, whether or not attached to a vessel.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, 3 CFR part 22, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles (370.40 km) from the baseline from which the territorial sea of the United States is measured.

Exempted educational activity means an activity, conducted by an educational institution accredited by a recognized national or international accreditation

body, of limited scope and duration, that is otherwise prohibited by part 285 or chapter VI of this title, but that is authorized by the appropriate Director or Regional Director for educational purposes.

Exempted or experimental fishing means fishing from a vessel of the United States that involves activities otherwise prohibited by part 285 or chapter VI of this title, but that are authorized under an exempted fishing permit (EFP). These regulations refer exclusively to exempted fishing. References in part 285 of this title and elsewhere in this chapter to experimental fishing mean exempted fishing under this part.

Fish means:

(1) When used as a noun, means any finfish, mollusk, crustacean, or parts thereof, and all other forms of marine animal and plant life other than marine mammals and birds.

(2) When used as a verb, means to engage in "fishing," as defined below.

Fishery means:

(1) One or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics, or method of catch; or

(2) Any fishing for such stocks.

Fishery management unit (FMU) means a fishery or that portion of a fishery identified in an FMP relevant to the FMP's management objectives. The choice of an FMU depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives.

Fishery resource means any fish, any stock of fish, any species of fish, and any habitat of fish.

Fishing, or *to fish* means any activity, other than scientific research conducted by a scientific research vessel, that involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for:

(1) Fishing; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Foreign fishing means fishing by a foreign fishing vessel.

Foreign fishing vessel (FFV) means any fishing vessel other than a vessel of the United States, except those foreign vessels engaged in recreational fishing, as defined in this section.

Gear conflict means any incident at sea involving one or more fishing vessels:

(1) In which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel; and

(2) That results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

Gillnet means a panel of netting, suspended vertically in the water by floats along the top and weights along the bottom, to entangle fish that attempt to pass through it.

Governing International Fishery Agreement (GIFA) means an agreement between the United States and a foreign nation or Nations under section 201(c) of the Magnuson Act.

Grants Officer means the NOAA official authorized to sign, on behalf of the Government, the cooperative agreement providing funds to support the Council's operations and functions.

Greenwich mean time (GMT) means the local mean time at Greenwich, England. All times in this part are GMT unless otherwise specified.

Handgear means handline, harpoon, or rod and reel.

Harass means to unreasonably interfere with an individual's work performance, or to engage in conduct that creates an intimidating, hostile, or offensive environment.

Harpoon or *harpoon gear* means fishing gear consisting of a pointed dart or iron attached to the end of a line several hundred feet in length, the other end of which is attached to a floatation device. Harpoon gear is attached to a pole or stick that is propelled only by hand, and not by mechanical means.

Industry means both recreational and commercial fishing, and includes the harvesting, processing, and marketing sectors.

International radio call sign (IRCS) means the unique radio identifier assigned a vessel by the appropriate authority of the flag state.

Joint venture means any operation by a foreign vessel assisting fishing by U.S. fishing vessels, including catching, scouting, processing and/or support. (A joint venture generally entails a foreign vessel processing fish received from U.S. fishing vessels and conducting associated support activities.)

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), also known as MFCMA.

Metric ton (mt) means 1,000 kg (2,204.6 lb).

nm means nautical mile (6,076 ft (1,852 m)).

Official number means the documentation number issued by the USCG or the certificate number issued by a state or by the USCG for an undocumented vessel.

Operator, with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

Optimum yield (OY) means the amount of fish:

(1) That will provide the greatest overall benefit to the United States, with particular reference to food production and recreational opportunities; and

(2) That is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by a person described in paragraph (1), (2), or (3) of this definition.

Plan Team means a Council working group selected from agencies, institutions, and organizations having a role in the research and/or management of fisheries, whose primary purpose is to assist the Council in the preparation and/or review of FMPs, amendments, and supporting documents for the Council, and/or SSC and AP.

Predominately means, with respect to fishing in a fishery, that more fishing on a stock or stocks of fish covered by the FMP occurs, or would occur in the absence of regulations, within or beyond the EEZ than occurs in the aggregate within the boundaries of all states off the coasts of which the fishery is conducted.

Processing, for the purpose of foreign fishing (subpart F), means any operation by an FFV to receive fish from foreign or U.S. fishing vessels and/or the preparation of fish, including, but not limited to, cleaning, cooking, canning,

smoking, salting, drying, or freezing, either on the FFV's behalf or to assist other foreign or U.S. fishing vessels.

Product recovery rate (PRR) means a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

Prohibited species, with respect to a foreign vessel, means any species of fish that that vessel is not specifically allocated or authorized to retain, including fish caught or received in excess of any allocation or authorization.

Recreational fishing, with respect to a foreign vessel, means any fishing from a foreign vessel not operated for profit and not operated for the purpose of scientific research. It may not involve the sale, barter, or trade of part or all of the catch (see § 600.513).

Retain on board means to fail to return fish to the sea after a reasonable opportunity to sort the catch.

Region mean one of five NMFS Regional Offices responsible for administering the management and development of marine resources in the United States in their respective geographical regions.

Regional Director (RD) means the Director of one of the five NMFS Regions described in Table 1 of § 600.502, or a designee.

Regional Program Officer means the NMFS official designated in the terms and conditions of the grant award responsible for monitoring, recommending, and reviewing any technical aspects of the application for Federal assistance and the award.

Round weight means the weight of the whole fish before processing or removal of any part.

Secretary means the Secretary of Commerce or a designee.

Science and Research Director means the Director of one of the five NMFS Fisheries Science Centers described in Table 1 of § 600.502 of this part, or a designee, also known as Center Director.

Scientific cruise means the period of time during which a scientific research vessel is operated in furtherance of a scientific research project, beginning when the vessel leaves port to undertake the project and ending when the vessel completes the project as provided for in the applicable scientific research plan.

Scientific research activity is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, or to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more issues involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch, and catch estimation of finfish and shellfish (invertebrate) species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish outside the scope of the applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish or invertebrates for product development, market research, and/or public display are not scientific research activities and must be permitted under exempted fishing procedures. For foreign vessels, such data collection activities are considered scientific research if they are carried out in full cooperation with the United States.

Scientific research plan means a detailed, written formulation, prepared in advance of the research, for the accomplishment of a scientific research project. At a minimum, a sound scientific research plan should include:

(1) A description of the nature and objectives of the project, including the hypothesis or hypotheses to be tested.

(2) The experimental design of the project, including a description of the methods to be used, the type and class of any vessel(s) to be used, and a description of sampling equipment.

(3) The geographical area(s) in which the project is to be conducted.

(4) The expected date of first appearance and final departure of the research vessel(s) to be employed, and deployment and removal of equipment, as appropriate.

(5) The expected quantity and species of fish to be taken and their intended disposition, and, if significant amounts of a managed species or species otherwise restricted by size or sex are needed, an explanation of such need.

(6) The name, address, and telephone/telex/fax number of the sponsoring organization and its director.

(7) The name, address, and telephone/telex/fax number, and curriculum vitae of the person in charge of the project and, where different, the person in charge of the research project on board the vessel.

(8) The identity of any vessel(s) to be used including, but not limited to, the vessel's name, official documentation number and IRCS, home port, and name, address, and telephone number of the owner and master.

Scientific research vessel means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as federally funded research and development centers), U.S. state or territorial agency, university (or other educational institution accredited by a recognized national or international accreditation body), international treaty organization, or scientific institution. In order for a vessel that is owned or chartered and controlled by a foreign government to meet this definition, the vessel must have scientific research as its exclusive mission during the scientific cruise in question and the vessel operations must be conducted in accordance with a scientific research plan.

Scouting means any operation by a vessel exploring (on the behalf of an FFV or U.S. fishing vessel) for the presence of fish by visual, acoustic, or other means that do not involve the catching of fish.

State means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

State employee means any employee of the state agency responsible for developing and monitoring the state's program for marine and/or anadromous fisheries.

Statement of Organization, Practices, and Procedures (SOPP) means a statement by each Council describing its organization, practices, and procedures as required under section 302(f)(6) of the Magnuson Act.

Stock assessment means the process of collecting and analyzing biological and statistical information to determine the changes in the abundance of fishery stocks in response to fishing, and, to the extent possible, to predict future trends of stock abundance. Stock assessments are based on resource surveys; knowledge of the habitat requirements, life history, and behavior of the species; the use of environmental indices to determine impacts on stocks; and catch statistics. Stock assessments are used as a basis to "assess and specify the present and probable future condition of

a fishery" (as is required by the Magnuson Act), and are summarized in the Stock Assessment and Fishery Evaluation or similar document.

Stock Assessment and Fishery Evaluation (SAFE) means a document or set of documents that provides Councils with a summary of the most recent biological condition of species in an FMU, and the social and economic condition of the recreational and commercial fishing industries and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

Substantially (affects) means, for the purpose of subpart G, with respect to whether a state's action or omission will substantially affect the carrying out of an FMP for a fishery, that those effects are important or material, or considerable in degree. The effects of a state's action or omission for purposes of this definition include effects upon:

(1) The achievement of the FMP's goals or objectives for the fishery;

(2) The achievement of OY from the fishery on a continuing basis;

(3) The attainment of the national standards for fishery conservation and management (as set forth in section 301(a) of the Magnuson Act) and compliance with other applicable law; or

(4) The enforcement of regulations implementing the FMP.

Support means any operation by a vessel assisting fishing by foreign or U.S. vessels, including supplying water, fuel, provisions, fish processing equipment, or other supplies to a fishing vessel.

Total length (TL) means the straight-line distance from the tip of the snout to the tip of the tail (caudal fin) while the fish is lying on its side, normally extended.

Transship means offloading and onloading or otherwise transferring fish or fish products and/or transporting fish or products made from fish.

Trawl means a cone or funnel-shaped net that is towed through the water by one or more vessels.

U.S. observer or *observer* means any person serving in the capacity of an observer employed by NMFS, either directly or under contract, or certified as a supplementary observer by NMFS.

Vessel of the United States or U.S. vessel means:

(1) Any vessel documented under chapter 121 of title 46, United States Code;

(2) Any vessel numbered under chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(3) Any vessel numbered under chapter 123 of title 46, United States Code, and used exclusively for pleasure; or

(4) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

§ 600.15 Other acronyms.

(a) *Fishery management terms.* (1) ABC—acceptable biological catch

(2) DAH—estimated domestic annual harvest

(3) DAP—estimated domestic annual processing

(4) EIS—environmental impact statement

(5) EY—equilibrium yield

(6) FMP—fishery management plan

(7) JVP—joint venture processing

(8) MSY—maximum sustainable yield

(9) PMP—preliminary FMP

(10) TAC—total allowable catch

(11) TALFF—total allowable level of foreign fishing

(b) *Legislation.* (1) APA—Administrative Procedure Act

(2) CZMA—Coastal Zone Management Act

(3) ESA—Endangered Species Act

(4) FACA—Federal Advisory Committee Act

(5) FOIA—Freedom of Information Act

(6) FLSA—Fair Labor Standards Act

(7) MFCMA—Magnuson Fishery Conservation and Management Act

(8) MMPA—Marine Mammal Protection Act

(9) MPRSA—Marine Protection, Research, and Sanctuaries Act

(10) NEPA—National Environmental Policy Act

(11) PA—Privacy Act

(12) PRA—Paperwork Reduction Act

(13) RFA—Regulatory Flexibility Act

(c) *Federal agencies.* (1) CEQ—Council on Environmental Quality

(2) DOC—Department of Commerce

(3) DOI—Department of the Interior

(4) DOS—Department of State

(5) EPA—Environmental Protection Agency

(6) FWS—Fish and Wildlife Service

(7) GSA—General Services Administration

(8) NMFS—National Marine Fisheries Service

(9) NOAA—National Oceanic and Atmospheric Administration

(10) OMB—Office of Management and Budget

(11) OPM—Office of Personnel Management

(12) SBA—Small Business Administration

(13) USCG—United States Coast Guard

Subpart B—Regional Fishery Management Councils

§ 600.105 Intercouncil boundaries.

(a) *New England and Mid-Atlantic Councils.* The boundary begins at the intersection point of Connecticut, Rhode Island, and New York at 41°18'16.249" N. lat. and 71°54'28.477" W. long. and proceeds south 37°22'32.75" East to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson Act.

(b) *Mid-Atlantic and South Atlantic Councils.* The boundary begins at the seaward boundary between the States of Virginia and North Carolina (36°31'00.8" N. lat.), and proceeds due east to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson Act.

(c) *South Atlantic and Gulf of Mexico Councils.* The boundary coincides with the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, which begins at the intersection of the outer boundary of the EEZ, as specified in the Magnuson Act, and 83°00' W. long., proceeds northward along that meridian to 24°35' N. lat., (near the Dry Tortugas Islands), thence eastward along that parallel, through Rebecca Shoal and the Quicksand Shoal, to the Marquesas Keys, and then through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Islands, the Marquesas Keys and the Florida Keys, and between the Florida Keys and the mainland, are within the Gulf of Mexico.

§ 600.110 Intercouncil fisheries.

If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(a) Designate a single Council to prepare the FMP for such fishery and any amendments to such FMP, in consultation with the other Councils concerned; or

(b) Require that the FMP and any amendments be prepared jointly by all the Councils concerned.

(1) A jointly prepared FMP or amendment must be adopted by a majority of the voting members, present and voting, of each participating Council. Different conservation and management measures may be developed for specific geographic areas, but the FMP should address the entire geographic range of the stock(s).

(2) In the case of joint FMP or amendment preparation, one Council will be designated as the

authorized officers access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to, personal quarters and areas within personal quarters.

(2) The owner and operator of each FFV must provide to authorized officers all records and documents pertaining to the fishing activities of the vessel, including but not limited to, production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(f) *Product storage.* The operator of each permitted FFV storing fish or fish products in a storage space must ensure that all non-fish product items are neither stowed beneath nor covered by fish products, unless required to maintain the stability and safety of the vessel. These items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-product items. These items may be in the space when necessary for safety of the vessel or crew or for storage of the product. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure safety of crew and to prevent shifting of cargo within the space.

§ 600.505 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of the Magnuson Act, the applicable GIFA, this subpart, or any permit issued under this subpart;

(2) Refuse to allow an authorized officer to board an FFV for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, the applicable GIFA, this subpart, or any other permit issued under this subpart;

(3) Assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (a)(2) of this section;

(4) Resist a lawful arrest for any act prohibited by the Magnuson Act, the applicable GIFA, this subpart, or any permit issued under this subpart;

(5) Interfere with, delay, or prevent by any means the apprehension or arrest of another person with the knowledge that such other person has committed any act prohibited by the Magnuson Act, the applicable GIFA, this subpart, or any permit issued under this subpart;

(6) Interfere with, obstruct, delay, oppose, impede, intimidate, or prevent by any means any boarding, investigation or search, wherever conducted, in the process of enforcing the Magnuson Act, the applicable GIFA, this subpart, or any permit issued under this subpart;

(7) Engage in any fishing activity for which the FFV does not have a permit as required under § 600.501;

(8) Engage in any fishing activity within the EEZ without a U.S. observer aboard the FFV, unless the requirement has been waived by the appropriate Regional Director;

(9) Retain or attempt to retain within the EEZ, directly or indirectly, any U.S. harvested fish, unless the FFV has a permit for Activity Codes 4 or 6.

(10) Use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued under this subpart;

(11) Violate any provision of the applicable GIFA;

(12) Falsely or incorrectly complete (including by omission) a permit application or permit form as specified in § 600.501 (d) and (k);

(13) Fail to report to the Assistant Administrator within 15 days any change in the information contained in the permit application for a FFV, as specified in § 600.501(k);

(14) Assault, resist, oppose, impede, intimidate, or interfere with an observer placed aboard an FFV under this subpart;

(15) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch prior to sampling, unless the observer has stated that sampling will not occur; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or effects without the express consent of the observer;

(16) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties;

(17) Harass or sexually harass an authorized officer or observer;

(18) Fail to provide the required assistance to an observer as described at § 600.506 (c) and (e);

(19) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of the FFV or its gear as required by this subpart;

(20) Falsify or fail to make, keep, maintain, or submit any record or report required by this subpart;

(21) Fail to return to the sea or fail to otherwise treat prohibited species as required by this subpart;

(22) Fail to report or falsely report any gear conflict;

(23) Fail to report or falsely report any loss, jettisoning, or abandonment of fishing gear or other article into the EEZ that might interfere with fishing, obstruct fishing gear or vessels, or cause damage to any fishery resource or marine mammals;

(24) Continue Activity Codes 1 through 4 after those activity codes have been canceled under § 600.511;

(25) Fail to maintain health and safety standards set forth in § 600.506(d);

(26) Violate any provisions of regulations for specific fisheries of this subpart;

(27) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state, territorial, or Federal regulations;

(28) Violate any provision of this subpart, the Magnuson Act, the applicable GIFA, any notice issued under this subpart or any permit issued under this subpart; or

(29) Attempt to do any of the foregoing.

(b) It is unlawful for any FFV, and for the owner or operator of any FFV except an FFV engaged only in recreational fishing, to fish—

(1) Within the boundaries of any state, unless the fishing is authorized by the Governor of that state as permitted by section 306(c) of the Magnuson Act to engage in a joint venture for processing and support with U.S. fishing vessels in the internal waters of that state; or

(2) Within the EEZ, or for any anadromous species or continental shelf fishery resources beyond the EEZ, unless the fishing is authorized by, and conducted in accordance with, a valid permit issued under § 600.501.

§ 600.506 Observers.

(a) *General.* To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson Act, the appropriate Regional or Science and Research Director (see table 2 to § 600.502) may assign U.S. observers to FFV's. Except as provided for in section 201(j)(2) of the Magnuson Act, no FFV may conduct fishing operations within the EEZ unless a U.S. observer is aboard.

(b) *Effort plan.* To ensure the availability of an observer as required by this section, the owners and operators of FFV's wanting to fish within the EEZ

foreign catch and effort reports will be used to make the determination listed in paragraphs (a) and (b) of this section. If NMFS estimates of catch or other values made during the season differ from those reported by the foreign fleets, efforts may be initiated by the designated representative of each Nation to resolve such differences with NMFS. If, however, differences still persist after such efforts have been made, NMFS estimates will be the basis for decisions and will prevail.

(e) *Duration.* Any closure under this section will remain in effect until an applicable new or increased allocation or JVP becomes available or the letter of credit required by § 600.518(b)(2) is reestablished.

§ 600.512 Scientific research.

(a) *Scientific research activity.* Persons planning to conduct scientific research activities in the EEZ that may be confused with fishing are encouraged to submit to the appropriate Regional Director, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Director, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required under any other applicable law. If the Regional Director, Director, or designee, after review of a research plan, determines that it does not constitute scientific research activity, but rather fishing, the Regional Director, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Director, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activities. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Reports.* Persons conducting scientific research are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

§ 600.513 Recreational fishing.

(a) Foreign vessels conducting recreational fishing must comply only with this section, and §§ 600.10, 600.504(a)(1), and 600.505 (as applicable). Such vessels may conduct recreational fishing within the EEZ and within the boundaries of a state. Any fish caught may not be sold, bartered, or traded.

(b) The owners or operator and any other person aboard any foreign vessel conducting recreational fishing must comply with any Federal laws or regulations applicable to the domestic fishery while in the EEZ, and any state laws or regulations applicable while in state waters.

§ 600.514 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and state statutes may apply to their activities.

(b) Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to enforcement action under the International Convention for the Protection of Submarine Cables, and to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) and other laws that implement that Convention. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than 1 nautical mile (1.85 km) from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than 0.25 nautical mile (0.46 km) from a buoy or buoys intended to mark the position of a cable when being laid, or when out of order, or broken.

§ 600.515 Interpretation of 16 U.S.C. 1857(4).

Section 307(4) of the Magnuson Act prohibits any fishing vessel other than a vessel of the United States (foreign fishing vessel) from operating in the EEZ if all of the fishing gear on board the vessel is not stowed in compliance with that section "unless such vessel is authorized to engage in fishing in the area in which the vessel is operating." If such a vessel has a permit authorization that is limited to fishing activities other than catching, taking or harvesting (such as support, scouting or processing activities), it must have all of its fishing gear stowed at all times while it is in the EEZ. If such a vessel has a permit authorization to engage in catching, taking or harvesting activities, but such authorization is limited to a specific area within the EEZ, and/or to a specific period of time, the vessel must have all of its fishing gear stowed while it is in the EEZ, except when it is in the specific area authorized, and/or during the specific period of time authorized.

§ 600.516 Total allowable level of foreign fishing (TALFF).

(a) The TALFF, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the OY of such fishery that will not be caught by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF's will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFF's at the beginning of the relevant fishing year will be published in the Federal Register. Adjustments to those numbers will be published in the Federal Register upon occasion or as directed by regulations implementing FMPs. For current apportionments, contact the appropriate Regional Director or the Director.

§ 600.517 Allocations.

The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of fish species and species groups. The Secretary of State officially notifies each foreign nation of its allocation. The burden of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels is upon the foreign nation and the owner or operator of the FFV.

§ 600.518 Fee schedule for foreign fishing.

(a) *Permit application fees.* Each vessel permit application submitted under § 600.501 must be accompanied by a fee of $354 per vessel, plus the surcharge, if required under paragraph (e) of this section, rounded to the nearest dollar. At the time the application is submitted to the DOS, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA," must be sent to the

§ 600.630 Application for reinstatement of state authority.

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

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

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

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

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

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

(c) *Hearing.* The Secretary has sole discretion to direct the Administrator to schedule hearings for the receipt of evidence by an administrative law judge. Hearings before the administrative law judge to receive such evidence will be conducted in accordance with § 600.620. Upon conclusion of such hearings, the administrative law judge will certify the record and a recommended decision to the Secretary. If the Secretary, upon consideration of the state's application or any response to the notice published under § 600.630(a)(2), the hearing record, the recommended decision, and any other relevant materials finds that the reasons for regulation of the fishery within the boundaries of the state no longer prevail, the Secretary will promptly terminate such regulation and publish in the Federal Register any regulatory amendments necessary to accomplish that end.

Subpart H—General Provisions for Domestic Fisheries

§ 600.705 Relation to other laws.

(a) *General.* Persons affected by these regulations should be aware that other Federal and state statutes and regulations may apply to their activities. Vessel operators may wish to refer to USCG regulations found in the Code of Federal Regulations title 33—Navigation and Navigable Waters and 46—Shipping; 15 CFR part 904, subpart D—Permit Sanctions and Denials; and title 43—Public Lands (in regard to marine sanctuaries).

(b) *State responsibilities.* Certain responsibilities relating to data collection and enforcement may be performed by authorized state personnel under a state/Federal agreement for data collection and a tripartite agreement among the state, the USCG, and the Secretary for enforcement.

(c) *Submarine cables.* Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to the submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than 1 nautical mile (1.85 km) from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than 0.25 nautical mile (0.46 km) from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

(d) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth in part 229 of this title.

(e) *Halibut fishing.* Fishing for halibut is governed by regulations of the International Pacific Halibut Commission set forth at part 300 of this title.

(f) *Marine sanctuaries.* All fishing activity, regardless of species sought, is prohibited under 15 CFR part 924 in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina.

§ 600.710 Permits.

Regulations pertaining to permits required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.715 Recordkeeping and reporting.

Regulations pertaining to records and reports required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.720 Vessel and gear identification.

Regulations pertaining to special vessel and gear markings required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.725 General prohibitions.

It is unlawful for any person to do any of the following:

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import, or export, any fish or parts thereof taken or retained in violation of the Magnuson Act or any other statute administered by NOAA and/or any regulation or permit issued under the Magnuson Act.

(b) Transfer or attempt to transfer, directly or indirectly, any U.S.-harvested fish to any foreign fishing vessel, while such vessel is in the EEZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act, which authorizes the receipt by such vessel of U.S.-harvested fish.

(c) Fail to comply immediately with enforcement and boarding procedures specified in § 600.730.

(d) Refuse to allow an authorized officer to board a fishing vessel or to enter areas of custody for purposes of conducting any search, inspection, or seizure in connection with the enforcement of the Magnuson Act or any other statute administered by NOAA.

(e) Dispose of fish or parts thereof or other matter in any manner, after any communication or signal from an authorized officer, or after the approach by an authorized officer or an enforcement vessel or aircraft.

(f) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, or seizure in connection with enforcement of the Magnuson Act or any other statute administered by NOAA.

(g) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by the Magnuson Act or any other statute administered by NOAA.

(h) Resist a lawful arrest for any act prohibited under the Magnuson Act or any other statute administered by NOAA.

(i) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, offer of sale, possession, transport, import, export, or transfer of any fish, or attempts to do any of the above.

(j) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act or any other statute administered by NOAA.

(k) Fish in violation of the terms or conditions of any permit or authorization issued under the Magnuson Act or any other statute administered by NOAA.

(l) Fail to report catches as required while fishing pursuant to an exempted fishing permit.

(m) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state or Federal regulations.

(n) Trade, barter, or sell; or attempt to trade, barter, or sell fish possessed or retained while fishing pursuant to an authorization for an exempted educational activity.

(o) Harass or sexually harass an authorized officer or an observer.

(p) It is prohibited to violate any other provision of this part, the Magnuson Act or any other statute administered by NOAA, any notice issued under this part, or any other regulation promulgated under the Magnuson Act or any other statute administered by NOAA.

§ 600.730 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to parts 625 through 699 of this chapter must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act or any other statute administered by NOAA and this chapter.

(b) *Communications.* (1) Upon being approached by a USCG vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF-FM radiotelephone is the preferred method for communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, or voice may be employed by an authorized officer, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. USCG units will normally use the flashing light signal "L" as the signal to stop. In the International Code of Signals, "L" (.–..) means "you should stop your vessel instantly." (Period (.) means a short flash of light; dash (–) means a long flash of light.)

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes prima facie evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must:

(1) Guard Channel 16, VHF-FM, if so equipped.

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his/her party to come aboard.

(3) Except for those vessels with a freeboard of 4 ft (1.2 m) or less, provide a safe ladder, if needed, for the authorized officer and his/her party to come aboard.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope or safety line, and illumination for the ladder.

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly. (Period (.) means a short flash of light; dash (-) means a long flash of light.)

(1) "AA" repeated (.-.-) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.— -.-. -.—) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... —.- ...—) means "you should stop or heave to; I am going to board you."

§ 600.735 Penalties.

Any person committing, or fishing vessel used in the commission of a violation of the Magnuson Act or any other statute administered by NOAA and/or any regulation issued under the Magnuson Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act, to this section, to 15 CFR part 904 (Civil Procedures), and to other applicable law.

§ 600.740 Enforcement policy.

(a) The Magnuson Act provides four basic enforcement remedies for violations, in ascending order of severity, as follows:

(1) Issuance of a citation (a type of warning), usually at the scene of the offense (see 15 CFR part 904, subpart E).

(2) Assessment by the Administrator of a civil money penalty.

(3) For certain violations, judicial forfeiture action against the vessel and its catch.

(4) Criminal prosecution of the owner or operator for some offenses. It shall be the policy of NMFS to enforce vigorously and equitably the provisions of the Magnuson Act by utilizing that form or combination of authorized remedies best suited in a particular case to this end.

(b) Processing a case under one remedial form usually means that other remedies are inappropriate in that case. However, further investigation or later review may indicate the case to be either more or less serious than initially considered, or may otherwise reveal that the penalty first pursued is inadequate to serve the purposes of the Magnuson Act. Under such circumstances, the Agency may pursue other remedies either in lieu of or in addition to the action originally taken. Forfeiture of the illegal catch does not fall within this general rule and is considered in most cases as only the initial step in

remedying a violation by removing the ill-gotten gains of the offense.

(c) If a fishing vessel for which a permit has been issued under the Magnuson Act is used in the commission of an offense prohibited by section 307 of the Magnuson Act, NOAA may impose permit sanctions, whether or not civil or criminal action has been undertaken against the vessel or its owner or operator. In some cases, the Magnuson Act requires permit sanctions following the assessment of a civil penalty or the imposition of a criminal fine. In sum, the Magnuson Act treats sanctions against the fishing vessel permit to be the carrying out of a purpose separate from that accomplished by civil and criminal penalties against the vessel or its owner or operator.

§ 600.745 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity.* Nothing in this section is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities in the EEZ are encouraged to submit to the appropriate Regional Director, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Director, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required by any other applicable law. If the Regional Director, Director, or designee, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Director, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Director, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity or recommend the applicant request an EFP. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activity. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Exempted fishing.*—(1) *General.* A NMFS Regional Director or Director may authorize, for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Director or Director in accordance with the criteria and procedures specified in this section. The Regional Director or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Director or Director to find out the applicable fee.

(2) *Application.* An applicant for an EFP shall submit a completed application package to the appropriate Regional Director or Director, as soon as practicable and at least 60 days before the desired effective date of the EFP. Submission of an EFP application less than 60 days before the desired effective date of the EFP may result in a delayed effective date because of review requirements. The application package must include payment of any required fee as specified by paragraph (b)(1) of this section, and a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.

(iv) For each vessel to be covered by the EFP, as soon as the information is available and before operations begin under the EFP:

(A) A copy of the USCG documentation, state license, or registration of each vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on marine mammals or endangered species.

(vi) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(vii) The signature of the applicant.

(viii) The Regional Director or Director, as appropriate, may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application or an application for which the appropriate fee has not been paid will not be considered until corrected in writing and the fee paid. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested.

(3) *Issuance.* (i) The Regional Director or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Director or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Director or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the Federal Register with a brief description of the proposal, and the intent of NMFS to issue an EFP. Interested persons will be given a 15- to 45-day opportunity to comment and/or comments will be requested during public testimony at a Council meeting. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Director or Director also will forward copies of the application to the Council(s), the USCG, and the appropriate fishery management agencies of affected states, accompanied by the following information:

(A) The effect of the proposed EFP on the target and incidental species, including the effect on any TAC.

(B) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on marine mammals and threatened or endangered species.

(ii) If the application is complete and warrants additional consultation, the Regional Director or Director may consult with the appropriate Council(s) concerning the permit application during the period in which comments have been requested. The Council(s) or the Director or Regional Director shall notify the applicant in advance of any meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving responses from the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Director or Director shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or threatened or endangered species in a significant way; or

(C) Issuance of the EFP would have economic allocation as its sole purpose; or

(D) Activities to be conducted under the EFP would be inconsistent with the intent of this section, the management objectives of the FMP, or other applicable law; or

(E) The applicant has failed to demonstrate a valid justification for the permit; or

(F) The activity proposed under the EFP could create a significant enforcement problem.

(iv) The decision of a Regional Director or Director to grant or deny an EFP is the final action of NMFS. If the permit, as granted, is significantly different from the original application, or is denied, NMFS may publish notification in the Federal Register describing the exempted fishing to be conducted under the EFP or the reasons for denial.

(v) The Regional Director or Director may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing, including, but not limited to:

(A) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.

(B) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.

(C) The time(s) and place(s) where exempted fishing may be conducted.

(D) The type, size, and amount of gear that may be used by each vessel operated under the EFP.

(E) The condition that observers, a vessel monitoring system, or other electronic equipment be carried on board vessels operated under an EFP, and any necessary conditions, such as predeployment notification requirements.

(F) Reasonable data reporting requirements.

(G) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.

(H) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures at set out in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

(4) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(5) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* EFPs issued under this section are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(7) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(8) *Sanctions.* Failure of a permittee to comply with the terms and conditions of an EFP may be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement purposes will be governed by 15 CFR part 904, subpart D.

(c) *Reports.* (1) Persons conducting scientific research activity are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

(2) Persons fishing under an EFP are required to report their catches to the appropriate Regional Director or Director, as specified in the EFP.

(d) *Exempted educational activities*—(1) *General.* A NMFS Regional Director or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The decision of a Regional Director or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Director or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) *Application.* An applicant for an exempted educational activity authorization shall submit to the appropriate Regional Director or Director, at least 15 days before the desired effective date of the authorization, a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.

(iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.

(v) The scope and duration of the activity.

(vi) For each vessel to be covered by the authorization:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(vii) The species and amounts expected to be caught during the exempted educational activity.

(viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and

the type, size, and amount of gear to be used.

(ix) The signature of the applicant.

(x) The Regional Director or Director may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) The Regional Director or Director, as appropriate, will review each application and will make a determination whether the application contains all of the required information, is consistent with the goals, objectives, and requirements of the FMP or regulations and other applicable law, and constitutes a valid exempted educational activity. The applicant will be notified in writing of the decision within 5 working days of receipt of the application.

(ii) The Regional Director or Director may attach terms and conditions to the authorization, consistent with the purpose of the exempted educational activity, including, but not limited to:

(A) The maximum amount of each regulated species that may be harvested.

(B) The time(s) and place(s) where the exempted educational activity may be conducted.

(C) The type, size, and amount of gear that may be used by each vessel operated under the authorization.

(D) Reasonable data reporting requirements.

(E) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.

(F) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activities as a condition of the authorization.

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), species and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

(4) *Duration.* Unless otherwise specified, authorization for an exempted educational activity is effective for no longer than 1 year, unless revoked, suspended, or modified. Authorizations may be renewed following the application procedures in this section.

(5) *Alteration.* Any authorization that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* Authorizations issued under this paragraph (d) are not transferable or assignable.

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued or be in possession of the applicant to which it was issued while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of fishing, despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal.

PARTS 601, 602, 603, 605, 611, 619, 620, and 621 [REMOVED]

4. Under the authority of 16 U.S.C. 1801 *et seq.*, parts 601, 602, 603, 605, 611, 619, 620, and 621 are removed.

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BILLING CODE 3510-22-W

ATTACHMENT 3

MAJOR ELEMENTS OF SCIENTIFIC RESEARCH, EXEMPTED FISHING, AND EXEMPTED EDUCATIONAL ACTIVITIES REGULATIONS

Note: Comments in parentheses () denote interpretations within the regulations. Comments within brackets [] are editorial interpretations. The term "Regional Administrator" is substituted for "Regional Director." A technical amendment will be published to update the regulations.

I. Scientific research activity (50 CFR 600.512 & 600.745(a))

A. "Scientific research activity"

1. Includes all types of activities normally associated with research.
2. **DOES**, for foreign vessels, include taking fish in commercial quantities, provided the operation is in full cooperation with the United States. [i.e. U.S. scientists have the opportunity to take part in the research.]
3. **DOES NOT** include testing of fishing gear [i.e., commercial fishing gear] or collection or retention of fish outside the scope of the scientific research plan.
4. **DOES NOT** include taking fish for product development, market research, and/or public display.

B There are no requirements applicable to certain scientific research activity under the Magnuson-Stevens Act, because qualifying scientific research does not constitute fishing. However, following the recommendations of these sections allows scientific research activity conducted from a scientific research vessel to gain a "rebuttable presumption" from the agency that the activity conducted is scientific research activity. Otherwise the vessel will be more likely to be boarded, with a possible disruption in the research. Failure to follow the recommendations of these sections is not a violation, and the agency may still recognize scientific research activity conducted from a scientific research vessel, based on a case-by-case investigation.

C. Letter of acknowledgment (LOA)

1. Getting an LOA is not required; however, to obtain a (LOA) from the Regional Administrator,

Director(F/SF) or designee, the applicant must, for the scientific cruise in question, submit a scientific research plan containing the operational and vessel information requested, preferably at least 60 days in advance of the cruise.

2. Minimum sound research plan contents.(from § 600.10)
   a. A description of the nature and objectives of the project, including the hypothesis or hypotheses to be tested.
   b. The experimental design of the project, including a description of the methods to be used, the type and class of any vessel(s) to be used, and a description of sampling equipment.
   c. The geographical area(s) in which the project is to be conducted.
   d. The expected date of first appearance and final departure of the research vessel(s) to be employed, and deployment and removal of equipment, as appropriate.
   e. The expected quantity and species of fish to be taken and their intended disposition, and, if significant amounts of a managed species or species otherwise restricted by size or sex are needed, an explanation of such need.
   f. The name, address, and telephone/telex/fax number of the sponsoring organization and its director. [As a means of confirming the legitimacy of the research, the organization should identify any NOAA or other government funding.]
   g. The name, address, and telephone/telex/fax number, and curriculum vitae of the person in charge of the project and, where different, the person in charge of the research project on board the vessel.
   h. The identity of any vessel(s) to be used including, but not limited to, the vessel's name, official documentation number and IRCS, home port, and name, address, and telephone number of the owner and master.

The RA/Director or designee will issue an LOA or advise the applicant in writing of any deficiencies that jeopardize the presumption of scientific research activity.

4. The vessel should retain a copy of the research plan and LOA on board for the duration of the cruise in order to facilitate identification of activities as scientific research.

D. Reports of catch and copies of cruise reports, scientific papers, etc., are requested to be submitted to the appropriate Science and Research Director or designee.

II. Exempted (experimental fishing (50 CFR 600.745(b) &

A. May be authorized by Director (F/SF) or RA, so long as authorized under or not prohibited by the FMP.

B. Exempted fishing includes but is not limited to:

1. Limited testing,
2. Collecting of fish for public display,
3. Data collection,
4. Health and safety,
5. Environmental cleanup, and/or
6. Hazard removal.

C RA or Director may charge fee to cover administrative costs, per NOAA Handbook.

D. Application.

1. Package to be submitted 60 days in advance of desired effective date. Delays may occur if submitted later.
2 Submission must include any required payment of fees, as determined by the RA/Director.
3 Written application contents:
   a. Date.
   b. Applicant's name, address, & telephone number.
   c. Statement of purpose/goals and justification.
   d. Vessel information.
      (1) Copy of USCG document, state license, etc., for each vessel.
      (2) Current name, address, and telephone number of owner and master, if not shown on document.
   e. Amounts of target and incidental species to be taken.
   f. Final disposition of catch.
   g. Anticipated impacts on marine mammals and endangered species.
   h. Time and place of fishing for each vessel.
   i. Gear to be used.
   j. Signature of applicant (not necessarily the representative of vessels to be fishing).
   k. Any additional information requested by RA/Director to make decision on issuance of the EFP.
4 Incomplete packages will not be considered until

corrected.

E. Issuance

1 RA/Director reviews application for completeness and appropriateness.
2 Applicant and Council advised in writing if an application is incomplete or does not meet the basic criteria of an EFP.
3. Summary of complete and appropriate applications published in Federal Register (either as a separate notice or as part of a Council meeting notice).
4. Public comment period for 15 to 45 days or at Council meeting w/cutoff date for additional applications possible.
5. Copies to affected Council, USCG, and appropriate states, including:
   a. Effect of EFP on target/incidental species.
   b. Regulations EFP exempts.
   c. Biological impacts of EFP, including any on marine mammals and endangered/threatened species.
6. RA/Director may consult with Council(s) on application.
7 Applicant must be offered opportunity to appear at any meeting discussing application (understood to mean public meetings only).
8. RA/Director notifies applicant in writing as soon as possible after end of comment period and consultations conducted of approval or denial of EFP and reasons for denial. [Council(s) and F/SF should receive copies.]
9. Grounds for denial of an EFP include, but are not limited to:
   a. Applicant's failure to disclose material or false statement.
   b. Detrimental to fish stocks, marine mammals, or endangered/threatened species.
   c. Economic allocation as sole purpose.
   d. Inconsistent with FMP or other law.
   e. No valid justification.
   f. EFP creates significant enforcement problem.
10. EFP grant or denial is final action of NMFS.
11. NMFS may publish notification of granting or denial of EFP describing a changed description or denial.
12. Authorized terms and conditions include, but are not limited to:
   a. Limits on amounts of regulated species to be taken, including trip limits.
   b. Description of authorized vessel(s).

c. Specific times and locations EFP is authorized.
d. Type, size, and amount of gear authorized.
e. Observer requirements.
f. Reasonable data reporting requirements.
g. Other conditions to assure compliance with the provisions of the EFP.
h. Provisions of public release of data.

F. Permits are effective for 1 year or less, unless otherwise specified.

G. Alteration of EFP makes it invalid.

H. EFP must be on board vessel and provided to authorized officer for inspection.

I. Failure to comply with terms and conditions of EFP is grounds for enforcement action.

J Reports must be made to the RA/Director and as specified in the EFP.

III. Exempted educational activities (EEAs) (50 CFR 600.745(d)

A. Authorized by RA/Director (F/SF) (or designee)

B. EEA authorized for educational purposes only, when the activity is of limited scope in amount of fish taken, geographic extent, and time frame (i.e., an EEA for a professor and students to take samples for the duration of a cruise).

C. Fees are not authorized.

D. Application

1. Package to be submitted 15 days in advance of desired effective date. Delays may occur if submitted later.
2. Written application contents:
   a. Date of submission.
   b. Applicant's name, address, and telephone.
   c. Statement of purpose/goals and justification, including disposition of all species taken.
   d. Evidence the sponsoring institution is a valid educational institution [could be as simple as having the application done on school letterhead, charter of school, letter showing accreditation, etc.].
   e. Scope and duration of the activity.
   f. Vessel information.

(1) Copy of USCG document, state license, etc., for each vessel.
(2) Current name, address, and telephone of owner and master, if not shown on document.

g. Species and amounts expected to be caught.
h. Time and location of fishing for each vessel and gear to be used.
i. Signature of applicant (not necessarily the representative of vessels to be fishing).
j. Any additional information requested by RA/Director to make decision on issuance of the authorization.

3 Incomplete packages not considered until corrected.

E. Issuance.

1 RA/Director reviews application for:
a. Completeness.
b. Consistence w/FMP, regulations and other applicable law.
c. Valid exempted educational activity.

2. Applicant and appropriate Council advised in writing if application incomplete or is not appropriate for further consideration. Authorized terms and conditions include, but are not limited to:
a. Limits on amounts of regulated species to be taken.
b. Specific times and places fishing is authorized.
c. Type, size, and amount of gear authorized.
d. Reasonable data reporting requirements.
e. Other conditions to assure compliance with the provisions of the authorization.
f. Provisions of public release of data.

4 Authorization will include:
a. Duration.
b. Vessel(s) to be used.
c. Species and gear involved.
d. Additional terms and conditions.

F Authorizations are effective for 1 year or less, unless otherwise specified.

G. Alteration makes authorization invalid.

Authorization is non-transferable

I The authorization must be on board the vessel and provided to an authorized officer for inspection.

J. Fishing outside the scope of an EEA [and outside existing regulations] or selling fish taken under an EEA is illegal.

ATTACHMENT 4

SAMPLE LOA (BASIC)

LETTER OF ACKNOWLEDGMENT: [identifier]

[Owner/Operator/Sponsoring Institution
[Address]

This letter acknowledges that the below named [vessel(s) and/or person(s)] has/have submitted a [scientific research plan], dated [date of document] as specified at 50 CFR 600.745.

Vessel Name: [Vessel Name and Official Identification Number as appearing on submitted documents.]

Scientists: [Identify, as appropriate.]

Effective Dates: [Provide inclusive dates for the research]

This LOA is separate and distinct from any permit required by any other applicable law. In order to facilitate identification of your activities as scientific research, you should carry a copy of your scientific research plan and this LOA on board the research vessel while conducting scientific research activities. Generally, activities conducted in accordance with a scientific research plan as acknowledged by a LOA are presumed to be scientific research. This presumption may be overcome if it can be shown that an activity does not fit the definition of scientific research activity or is outside the scope of your scientific research plan.

We request that you provide a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of your catch, to [identify the appropriate Science and Research Director, and address].

For information regarding this LOA, contact [identify point of contact and telephone number].

_____ _____
[Regional Administrator or Delegate] Date

ATTACHMENT 5

SAMPLE LOA (WHERE CONCERNS EXIST WITH THE RESEARCH)

LETTER OF ACKNOWLEDGMENT: [identifier]

[Owner/Operator/Sponsoring Institution]
[Address]

This letter acknowledges that the below named [vessel(s) **and/or person(s)] has/have** submitted a **[scientific research plan]**, dated [date of document] as specified at 50 CFR 600.745.

Vessel Name: **[Vessel Name and Official Identification Number as appearing on submitted documents.]**

Scientists: **[Identify, as appropriate.**

Effective Dates **[Provide inclusive dates for the research]**

This LOA is separate and distinct from any permit required by any other applicable law. In order to facilitate identification of your activities as scientific research, you should carry a copy of your scientific research plan and this LOA on board the research vessel while conducting scientific research activities. Generally, activities conducted in accordance with a scientific research plan as acknowledged by a LOA are presumed to be scientific research. This presumption may be overcome if it can be shown that an activity does not fit the definition of scientific research activity or is outside the scope of your scientific research plan.

[For a concern about fishing] Certain activities described in your research plan appear to constitute "fishing" as defined at 50 CFR 600.10. These concerns put a presumption that you will be conducting scientific research (as described above) in jeopardy. I recommend **[(a) revised scientific research plan, (b) seeking an EFP, or (c) reevaluate the need for the need for the activity (if an EFP for the activity is unlikely to be issued)]**

[For a concern about take of marine mammals or protected species] Certain activities described in your research plan may result in the take of **[identify]** for which specific authorizations are required. You should contact **[identify office to contact and telephone number]** to discuss these requirements and to obtain the appropriate authorizations before conducting your research.

[For a concern about violation of other law] Certain activities

described in your research plan appear to be in violation of **[identify potential violation, i.e. The Florida Keys National Marine Sanctuary Regulations]**. You should contact **[identify office (or agency) to contact and telephone number]** to resolve these concerns before conducting your research.

We request that you provide a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of your catch, to **[identify the appropriate Science and Research Director, and address]**.

For information regarding this LOA, contact **[identify point of contact and telephone number]**.

_____ _____

[Regional Administrator or Delegate] Date

ATTACHMENT 6

SAMPLE SRP FOR A NOAA/NMFS ACTIVITY

SCIENTIFIC RESEARCH PERMIT (SRP): [identifier]

[Owner/Operator/Sponsoring Institution
[Address]

This SRP authorizes the below named vessel(s) identified in the attached scientific research plan, dated **[date of document]** as specified at 50 CFR 600.745 to conduct scientific research in the exclusive economic zone **(if involving species regulated under Other fisheries laws) [and/or take species regulated under the Atlantic Tunas Convention Act]**.

Vessel Name: **[Vessel Name and Official Identification Number as appearing on submitted documents.]**

Scientists: **[Identify, as appropriate.]**

Effective Dates: **[Provide inclusive dates for the research]**

This SRP is separate and distinct from any permit required by any other applicable law. In order to facilitate identification of your activities as scientific research, you must carry a copy of your scientific research plan and this SRP on board the research vessel while conducting scientific research activities. Generally, activities conducted in accordance with a scientific research plan permitted by a SRP are exempt from applicable regulations. However, activities outside the scope of your permit that are in violation of the applicable regulations may be subject to sanctions.

For information regarding this SRP, contact **[identify point of contact and telephone number]**.

_____ _____

[Regional Administrator or Delegate] Date

DETERMINATIONS

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

Under the Magnuson-Stevens Act, scientific research activity conducted from a scientific research vessel is not fishing and, therefore, exempt from the requirements Magnuson-Stevens Act regulations. Research activity is exempt from any requirements of the Magnuson-Stevens Act as described in the submitted scientific research plan and modified by any requirements of this SRP.

ATLANTIC TUNAS CONVENTION ACT (ATCA)

(Use only when species regulated under ATCA are involved.) Under ATCA, scientific research activity conducted from a scientific research vessel is fishing. This permit is necessary for conservation and management of ATCA species and is consistent with ATCA

NATIONAL ENVIRONMENTAL POLICY ACT

Option 1. (For most research where the amounts of fish taken are not significant.) This action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216-6. This action falls within the general categorical exclusion provided for research by that order.

Option 2. (For research where the impacts have been considered in previous environmental assessments.) This action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216-6. A categorical exclusion is appropriate because **(provide justification)**. The rule falls within the scope of alternatives addressed in the environmental assessment prepared for **(identify** and implements only minor changes.

ENDANGERED SPECIES ACT

Option 1. I have determined that research activities conducted pursuant to this permit will not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations in this fishery.

Option 2. **(If an informal consultation or a formal section 7 consultation was done, indicate the date and the conclusion.)**

MARINE MAMMAL PROTECTION ACT

Option 1. I have determined that research activities conducted under this permit will have no adverse impact on marine mammals

Option 2. Adverse impacts on marine mammals resulting from fisheries research activities conducted under this permit are discussed in the **(identify EA or EIS that is applicable)**.

ATTACHMENT 7

DOCUMENTS APPROPRIATE FOR VARIOUS ACTIVITIES UNDER THE MAGNUSON-STEVENS ACT OR ATCA

Description of Activity[1]	Appropriate Document				
	Fishing[2] Permit	LOA[3]	SRP	EFP	EEA
ACTIVITIES CONNECTED WITH RESEARCH					
A. Scientific research activity[4] conducted from a scientific research vessel engaged in activities that would meet the definition of fishing under the Magnuson-Stevens Act but for the exemption applicable to this activity					
1) when the vessel is foreign and in full cooperation with the U.S.,		X			
2) when the vessel is foreign and not in full cooperation with the U.S.,		X			
3) when the fish taken as part of the research are later sold, or		X			
4) when the vessel is a NOAA/NMFS or NOAA/NMFS controlled vessel.			X		
B. Scientific research activity conducted from a scientific research vessel taking fish regulated under ATCA					
1) when the vessel is foreign,			X		
2) when the vessel is domestic, or			X		
3) when the vessel is a NOAA/NMFS or NOAA/NMFS controlled vessel.			X		

Description of Activity	Appropriate Document				
	Fishing Permit	LOA	SRP	EFP	EEA
C. Activity (i.e., sampling of catch or collection of specimens) conducted by a researcher on board a fishing vessel of opportunity[5] that would meet the definition of scientific research if the activity were on a scientific research vessel					
1) under the Magnuson-Stevens Act, or				X	
2) under ATCA.				X	
D. Scientific research activity conducted in the EEZ that involves the marking or tagging of species regulated under the Magnuson-Stevens Act.					
1) from a scientific research vessel,		X			
2) from a vessel of opportunity.				X	
E. Scientific research activity conducted anywhere in the Atlantic Ocean or Gulf of Mexico that involves the marking or tagging of species regulated under ATCA:					
1) from a scientific research vessel,			X		
2) from a vessel of opportunity.				X	
F. Activity that takes fish outside of scientific research activity, but is permitted as compensation for the use of a vessel for research.				X	
G. Activity considered fishing used for research or education without any exemption.	X				

Description of Activity	Appropriate Document				
	Fishing Permit	LOA	SRP	EFP	EEA
ACTIVITIES CONNECTED WITH FISHING					
A. Fishing that does not comply with the regulations governing the species taken and is not done by an accredited educational institution but may be for:					
1) Limited testing of fishing gear or technique,				X	
2) Collection for public display by an entity not an accredited educational institution,				X	
3) Data collection,				X	
4) Exploratory fishing,				X	
5) Health and safety monitoring, or				X	
6) Environmental cleanup or hazard removal.				X	
B. Activity (i.e., sampling of catch or collection of specimens) conducted by a NMFS or NMFS-contracted observer on a fishing vessel for the purposes of compliance, data collection, or research.					
1) under the Magnuson-Stevens Act, or				X	
2) under ATCA.				X	

Description of Activity	Appropriate Document				
	Fishing Permit	LOA	SRP	EFP	EEA
ACTIVITIES CONNECTED WITH EDUCATION					
A. Fishing conducted by an accredited educational institution that does not comply with the regulations governing the species taken and does not result in the trade, barter, or sale of the fish taken, with limited scope or duration, or					X
B. Such fishing conducted from a fishing vessel of opportunity.					X
C. Collection for public display by an accredited educational institution when a fee is to be charged for viewing the fish or it may be subsequently sold, traded, or bartered.				X	
D. Collection for public display by an accredited educational institution when no fee is to be charged for viewing and the fish will not be subsequently sold, traded, or bartered.					X

ENDNOTES

1. Under both Magnuson-Stevens Act and the ATCA, unless otherwise noted.

2. A fishing permit if required by the regulations governing the species taken and the disposition of the fish (i.e., recreational or no sale; commercial or for sale, trade, or barter.

3. Obtaining an LOA is always voluntary; however, it does provide reasonable assurance that the research will not be disturbed.

4 Underlined terms are defined at 50 CFR 600.10.

5. A fishing vessel of opportunity is a fishing vessel conducting routine fishing operations that has a researcher on board to sample/retain catch during the vessel's operations. The sampling may be from the target species, bycatch, species allowed to be retained, and species whose retention is prohibited by regulations. Research or educational activities on a vessel of opportunity differ from a those on a scientific research vessel in that the vessel is fishing, as defined by the Magnuson-Stevens Act or ATCA, and the researcher/educator is not controlling the activity of the vessel.