

§ 904.1

15 CFR Ch. IX (1–1–03 Edition)

Subpart F—Seizure and Forfeiture Procedures

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AUTHORITY: 16 U.S.C. 1801–1882; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1407; 16 U.S.C. 3371–3378; 16 U.S.C. 1431–1439; 16 U.S.C. 773–773k; 16 U.S.C. 951–961; 16 U.S.C. 1021–1032; 16 U.S.C. 3631–3644; 42 U.S.C. 9101 *et seq.*; 30 U.S.C. 1401 *et seq.*; 16 U.S.C. 971–971i; 16 U.S.C. 781 *et seq.*; 16 U.S.C. 2401–2412; 16 U.S.C. 2431–2444; 16 U.S.C. 972–972h; 16 U.S.C. 916–916l; 16 U.S.C. 1151–1175; 16 U.S.C. 3601–3608; 16 U.S.C. 1851 note; 15 U.S.C. 4201 *et seq.*; Pub. L. 102–587, 106 Stat. 5039.

SOURCE: 52 FR 10325, Mar. 31, 1987, unless otherwise noted.

Subpart A—General

§ 904.1 Purpose and scope.

(a) This part sets forth the procedures governing NOAA's administrative proceedings for assessment of civil penalties, suspension, revocation, modification, or denial of permits, issuance and use of written warnings, and release or forfeiture of seized property.

(b) This subpart defines terms appearing in the part and sets forth rules for the filing and service of documents in administrative proceedings covered by this part.

(c) The following statutes authorize NOAA to assess civil penalties, impose permit sanctions, issue written warnings, and/or seize and forfeit property in response to violations of those statutes:

- (1) Antarctic Conservation Act of 1978, 16 U.S.C. 2401–2412;
- (2) Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431–2444;
- (3) Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601–3608;

(4) Atlantic Striped Bass Conservation Act, 16 U.S.C. 1851 note;

(5) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971i;

(6) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*;

(7) Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972–972h;

(8) Endangered Species Act of 1973, 16 U.S.C. 1531–1543;

(9) Fur Seal Act Amendments of 1983, 16 U.S.C. 1151–1175;

(10) Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378;

(11) Land Remote-Sensing Commercialization Act of 1981, 15 U.S.C. 4201 *et seq.*;

(12) Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801–1882;

(13) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361–1407;

(14) Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. 1431–1439;

(15) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773–773k;

(16) North Pacific Fisheries Act of 1954, 16 U.S.C. 1021–1032;

(17) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.*;

(18) Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631–3644;

(19) Sponge Act, 16 U.S.C. 781 *et seq.*;

(20) Tuna Conventions Act of 1950, 16 U.S.C. 951–961; and

(21) Whaling Convention Act of 1949, 16 U.S.C. 916–916l.

The procedures set forth in this part are intended to apply to administrative proceedings under these and later-enacted statutes administered by NOAA.

§ 904.2 Definitions.

Unless the context otherwise requires, or as otherwise noted, terms in this part have the meanings prescribed in the applicable statute or regulation. In addition, the following definitions apply:

Administrator means the Administrator of NOAA or a designee.

Agency means the National Oceanic and Atmospheric Administration (NOAA).

Applicable statute means a statute cited in § 904.1(c), and any regulations issued by NOAA to implement it.

Applicant means any person who applies or is expected to apply for a permit.

Citation means a written warning (see section 311(c) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1861(c), and section 11(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773i(c)).

Decision means an initial or final decision of the Judge.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include inquiries regarding procedures, scheduling, and status.

Final administrative decision means an order or decision of NOAA assessing a civil penalty or permit sanction which is not subject to further Agency review under this part, and which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

Forfeiture includes, but is not limited to, surrender or relinquishment of any claim to an item by written agreement, or otherwise; or extinguishment of any claim to, and transfer of title to an item to the Government by court order or by order of the Administrator under a statute.

Initial decision means a decision of the Judge which, under applicable statute and regulation, is subject to review by the Administrator, but which becomes the final administrative decision in the absence of such review.

Judge means Administrative Law Judge.

NOAA (see *Agency*) means either the Administrator or a designee acting on behalf of the Administrator.

Party means the respondent and the Agency as represented by counsel; if they enter an appearance, a joint and several respondent, vessel owner, or permit holder; and any other person allowed to participate under § 904.204(a).

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

Permit means any license, permit, certificate, or other approval issued by NOAA under an applicable statute.

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

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

Vessel owner means the owner of any vessel that is liable *in rem* for any civil penalty under this part, or whose permit may be subject to sanction as a result of civil penalty proceedings under this part.

Written warning means a notice in writing to a person that a violation of a minor or technical nature has been documented against the person or against the vessel which is owned or operated by the person.

§ 904.3 Filing and service of documents.

(a) Whenever this part requires service of a document or other paper, such service may effectively be made on the agent for service of process or on the attorney for the person to be served or other representative. Refusal by the person to be served, or his or her agent or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal. Service will be considered effective when the document is mailed to an addressee's last known address.

(b) Any documents or pleadings filed or served must be signed:

- (1) By the person or persons filing the same,
- (2) By an officer thereof if a corporation,
- (3) By an officer or authorized employee if a government instrumentality, or
- (4) By an attorney or other person having authority to sign.

(c) A pleading or document will be considered served and/or filed as of the date of the postmark (or as otherwise shown for government-franked mail); or (if not mailed) as of the date actually delivered in person; or as shown by electronic mail transmission.