their views (orally or in writing, in the Judge’s discretion); or
(2) By adoption of an equivalent finding of probable cause or an admission in any administrative or judicial proceeding to which the recipient of the NOPPS or NIDP was a party, including, but not limited to, a hearing to arrest or set bond for a vessel in a civil forfeiture action or an arraignment or other hearing in a criminal action. Adoption of a finding or admission under this paragraph may be made only after the Judge reviews pertinent portions of the transcript or other records, documents, or pleadings from the other proceeding.
  (c) An order for interim action under paragraph (a) of this section is unappealable and will remain in effect until a decision is made on the NOPPS or NIDP. Where such interim action has been taken, the Judge will expedite any hearing requested under §904.304.

Subpart E—Written Warnings

§ 904.400 Purpose and scope.
This subpart sets forth the policy and procedures governing the issuance and use of written warnings by persons authorized to enforce the statutes administered by NOAA, and the review of such warnings. A written warning may be issued in lieu of assessing a civil penalty or initiating criminal prosecution for violation of any of the laws cited in §904.1(c).

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

§ 904.402 Procedures.
(a) Any person authorized to enforce the laws listed in §904.1(c) or Agency counsel may issue a written warning to a respondent as provided in §904.3.
(b) The written warning will:
(1) State that it is a “written warning”;
(2) State the factual and statutory or regulatory basis for its issuance;
(3) Advise the respondent of its effect in the event of a future violation; and
(4) Inform the respondent of the right of review and appeal under §904.403.
(c) NOAA will maintain a record of written warnings that are issued.
(d) If, within 120 days of the date of the written warning, further investigation indicates that the violation is more serious than realized at the time the written warning was issued, or that the respondent previously committed a similar violation for which a written warning was issued or other enforcement action was taken, NOAA may withdraw the warning and commence other administrative or judicial proceedings.

§ 904.403 Review and appeal of a written warning.
(a) If a respondent receives a written warning from an authorized officer, the respondent may seek review by Agency counsel. The request for review must be in writing and must present the facts and circumstances that explain or deny the violation described in the written warning. The request for review must be filed at the NOAA Office of the Assistant General Counsel for Enforcement and Litigation, 484 Georgia Avenue, Suite 400, Silver Spring, MD 20910, within 60 days of receipt of the written warning. Agency counsel may, in his or her discretion, affirm, vacate, or modify the written warning and will notify the respondent of his or her determination. The Agency counsel’s determination constitutes the final agency action, unless it is appealed pursuant to paragraph (b) of this section.
(b) If a respondent receives a written warning from Agency counsel, or receives a determination from Agency counsel affirming a written warning issued by an authorized officer, the respondent may appeal to the NOAA Deputy General Counsel. The appeal must be filed at the NOAA Office of the General Counsel, Herbert Hoover Office Building, 14th & Constitution Avenue, NW., Washington, DC 20230, within 60 days of receipt of the written warning issued by Agency counsel, or the determination from Agency counsel affirming a written warning issued by an authorized officer.
§ 904.500

(1) An appeal from an Agency counsel issued written warning must be in writing and must present the facts and circumstances that explain or deny the violation described in the written warning.

(2) An appeal from an Agency counsel’s determination affirming a written warning issued by an authorized officer must be in writing and include a copy of the Agency counsel’s determination affirming the written warning.

(c) The NOAA Deputy General Counsel may, in his or her discretion, affirm, vacate, or modify the written warning and will notify the respondent of the determination. The NOAA Deputy General Counsel’s determination constitutes the final agency action.

Subpart F—Seizure and Forfeiture Procedures

§ 904.500 Purpose and scope.

(a) This subpart sets forth procedures governing the release, abandonment, forfeiture, remission of forfeiture, or return of seized property (including property seized and held solely as evidence) that is subject to forfeiture under the various statutes administered by NOAA.

(b) Except as provided in this subpart, these regulations apply to all seized property subject to forfeiture under the statutes listed in subpart A of this part. This subpart is in addition to, and not in contradiction of, any special rules regarding seizure, holding or disposition of property seized under these statutes.

§ 904.501 Notice of seizure.

Within 60 days from the date of the seizure, NOAA will serve the Notice of Seizure as provided in §904.3 to the owner or consignee, if known or easily ascertainable, or other party that the facts of record indicate has an interest in the seized property. In cases where the property is seized by a state or local law enforcement agency; a Notice of Seizure will be given in the above manner within 90 days from the date of the seizure. The Notice will describe the seized property and state the time, place and reason for the seizure, including the provisions of law alleged to have been violated. The Notice will inform each interested party of his or her right to file a claim to the seized property, and state a date by which a claim must be filed, which may not be less than 35 days after service of the Notice. The Notice may be combined with a Notice of the sale of perishable fish issued under §904.505. If a claim is filed the case will be referred promptly to the U.S. Department of Justice for institution of judicial proceedings.

§ 904.502 Bonded release of seized property.

(a) As authorized by applicable statute, at any time after seizure of any property, NOAA may, in its sole discretion, release any seized property upon deposit with NOAA of the full value of the property or such lesser amount as NOAA deems sufficient to protect the interests served by the applicable statute. In addition, NOAA may, in its sole discretion, accept a bond or other security in place of fish, wildlife, or other property seized. The bond will contain such conditions as NOAA deems appropriate.

(b) Property may be released under this section only if possession thereof will not violate or frustrate the purpose or policy of any applicable law or regulation. Property that will not be released includes, but is not limited to:

1. Property in which NOAA is not satisfied that the requester has a substantial interest;
2. Property whose entry into the commerce of the United States is prohibited;
3. Live animals, except in the interest of the animals’ welfare; or
4. Property whose release appears to NOAA not to be in the best interest of the United States or serve the purposes of the applicable statute.

(c) If NOAA grants the request, the amount paid by the requester will be deposited in a NOAA expense account. The amount so deposited will for all purposes be considered to represent the property seized and subject to forfeiture, and payment of the amount by requester constitutes a waiver by requester of any claim rising from the seizure and custody of the property. NOAA will maintain the money so deposited pending further order of NOAA.