

### § 904.303

must surrender a permit against which a permit sanction has taken effect. The effectiveness of the permit sanction, however, does not depend on surrender of the permit.

#### § 904.303 Notice of intent to deny permit (NIDP).

(a) NOAA may issue a NIDP if the permit applicant has been charged with a violation of a statute, regulation, or permit administered by NOAA, for failure to pay a civil penalty or criminal fine, or for failure to comply with any term of a settlement agreement.

(b) The NIDP will set forth the basis for its issuance and any opportunity for a hearing, and will be served in accordance with § 904.3.

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

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

#### § 904.304 Opportunity for hearing.

(a) Except as provided in paragraph (b) of this section, the recipient of a NOPS or NIDP will be provided an opportunity for a hearing, as governed by § 904.201.

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

#### § 904.305 Final administrative decision.

(a) If no request for hearing is timely filed as provided in § 904.201(a), the NOPS or NIDP becomes effective as the final administrative decision and order of NOAA 30 days after service of the NOPS or NIDP or on the last day of any delay period granted.

(b) If a request for hearing is timely filed in accordance with § 904.201(a), the date of the final administrative deci-

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sion is as provided in subpart C of this part.

#### PERMIT SANCTIONS FOR NONCOMPLIANCE

#### § 904.310 Nature of permit sanctions.

(a) NOAA may suspend, modify, or deny a permit if:

(1) A civil penalty has been assessed against the permit holder under subparts B and C of this part, but the permit holder has failed to pay the civil penalty, or has failed to comply with any term of a settlement agreement; or

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

(b) NOAA will suspend any permit issued to a foreign fishing vessel under section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act under the circumstances set forth in paragraph (a) of this section.

(c) NOAA will withhold any other permit for which the permit holder applies if either of the conditions in paragraph (a) of this section is applicable.

#### § 904.311 Compliance.

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

(a) The suspension will not take effect;

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

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

#### PERMIT SANCTION FOR VIOLATIONS

#### § 904.320 Nature of permit sanctions.

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

(a) *Revocation.* A permit may be cancelled, with or without prejudice to