

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

This Notice solicits comments on any suggested alternatives.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Rules

Part 25 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: Sections 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 416–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

Section 25.104 is amended by adding new paragraph (f) to read as follows:.

§ 25.104 Preemption of local zoning of earth stations.

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(f) No restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter.

[FR Doc. 96–6380 Filed 3–14–96; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 620

[Docket No. 960222043–6043–01; I.D. 111595B]

RIN 0648–AC61

Foreign and Domestic Fishing; Scientific Research Activity and Exempted Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes new and revised definitions for certain regulatory

terms to distinguish clearly among scientific research activities, exempted fishing, and exempted educational activities; to clarify and standardize issuance procedures for letters of acknowledgement of notification of scientific research activity and exempted fishing permits (EFPs); and to facilitate scientific research activities.

DATES: Comments must be received by April 15, 1996.

ADDRESSES: Comments should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be sent to Richard H. Schaefer at the above address and to the Office of Management and Budget, Paperwork Reduction Project (0648–0214), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William D. Chappell, Fishery Management Specialist; 301–713–2341.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) authorizes the Secretary of Commerce to conserve and manage fishery resources in the exclusive economic zone (EEZ) by regulating “fishing.” Section 3(10) of the Magnuson Act, 16 U.S.C. 1802(10), defines “fishing” as the catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or any other operations at sea in support of, or in preparation for, any of the aforementioned activities. “Fish” includes finfish, mollusks, crustaceans, and all other forms of marine life other than marine mammals and birds.

Excluded expressly from the definition of fishing, and therefore from the Magnuson Act's purview, is “scientific research activity which is conducted by a scientific research vessel.” The Magnuson Act does not, however, define “scientific research activity” or “scientific research vessel.” The legislative history provides little guidance on Congress' intent in exempting scientific research conducted from a scientific research vessel from the Magnuson Act's requirements. The sole mention of the subject occurred during the Senate Conference Committee's consideration of H.R. 200, which, after amendment, ultimately became the Magnuson Act:

It should be noted that the definition of “fishing” in section 3(10) does not include scientific research conducted by a scientific research vessel. The conference committee does not consider the conducting of tests of fishing gear to be scientific research within the meaning of the bill. (S. Conf. Rep. No. 711, 94th Cong., 2d Sess. 43, reprinted in 1976 U.S. Code Cong. & Admin. News 660, 667).

It seems clear that Congress' intent was that not all activity that takes place on board a scientific research vessel be exempt from provisions of the Magnuson Act. The focus of the exemption is on the research nature of a particular activity conducted on board a scientific research vessel, rather than on the fish taken. However, because “scientific research activity” and “scientific research vessel” have never been precisely defined, the potential exists for abuse by using the exemption to obtain marketable fish outside of established fishing seasons or areas, or to otherwise avoid applicable regulations. Accordingly, NMFS now proposes definitions for “scientific research activity” and “scientific research vessel”.

Consistent with the wording of the Magnuson Act, the proposed definition of “scientific research activity” has as its focus “pure science,” as opposed to general gear or market research, or scouting for exploitable resources. Such applications would now be included under exempted fishing. The proposed definition for “scientific research activity” for the purposes of these regulations is 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 U.S. 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 fish and shellfish (invertebrate) species considered to be a component of the fishery resources within the U.S. 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 must be permitted under exempted fishing procedures. These proposed regulations would allow foreign vessels to conduct data collection activities as described above, which might be considered exempted fishing in domestic fisheries, as part of scientific research activities when they are carried out in full cooperation with the United States. This represents the current wording of the scientific research rules in part 611. Full cooperation with the United States has generally meant the research activity was conducted with a U.S. scientist on board or invited to participate in the research and with the data generated from the research provided to the United States.

An accepted convention of any bona fide scientific research project is the advance preparation of a written research plan that guides the conduct of the research. At a minimum, such a research plan or protocol includes (1) a description of the nature and objectives of the project; (2) the experimental design of the project, including description of the methods to be used, the type and class of vessel(s) to be used, and a description of sampling equipment; (3) the geographical areas in which the project is to be conducted; (4) the expected date of first appearance and final departure of any research vessel(s) to be employed, and deployment and removal of equipment, as appropriate; (5) the 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, 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; and (8) the identity of the vessel(s) to be used.

To facilitate scientific research activities, NMFS proposes to encourage researchers interested in conducting scientific research activities in the EEZ to submit to the appropriate Director, Regional Director, or designee, as proposed to be defined in 50 CFR 611.2, a scientific research plan 60 days, or as far in advance as practicable, before the

start of the research. The Director, Regional Director, or designee would acknowledge notification of a scientific research activity by issuing a letter of acknowledgment. This letter of acknowledgment would be separate and distinct from any permit required by any other applicable law. Submission and acknowledgment of a scientific research plan meeting the minimum standards listed above, in advance of the conduct of the research, would allow a presumption that activities within the scope of the research plan or protocol are scientific research activities. NMFS would advise all persons conducting scientific research in the EEZ to carry the scientific research plan and letter of acknowledgment on board the scientific research vessel. In the event of boarding or inspection for enforcement purposes, presentation of an acknowledged scientific research plan would facilitate prompt validation by enforcement officers that activities covered by the research plan are bona fide scientific research activities and not fishing.

NMFS proposes to define "scientific research vessel" as 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. The definition further provides that, if the vessel is owned or chartered and controlled by a foreign government, that vessel would fit within the definition only if the vessel has scientific research as its exclusive mission during the scientific cruise in question, and the vessel operations are undertaken pursuant to a scientific research plan. These conditions are necessary to prevent commercial fishing conducted from vessels controlled by foreign scientific agencies from qualifying for the scientific research activity exemption merely because the vessel is owned or controlled by a governmental agency. A definition for "scientific cruise" is also proposed in this rule.

"Exempted fishing," an activity regulated under fishery management plans (FMPs) prepared by Regional Fishery Management Councils (Councils) or the Secretary of Commerce, would be defined in this proposed rule for domestic vessels only. Exempted fishing is currently referred to as "experimental fishing" in certain existing regulations in 50 CFR part 285 and 50 CFR chapter VI. NMFS

anticipates that individual FMPs that currently authorize "experimental fishing" would be amended, as necessary, to replace existing references to "experimental fishing" with references to "exempted fishing," and to standardize terminology and procedures for issuance of EFPs by replacing existing regulatory text with references to these proposed additions to 50 CFR part 620. In the absence of specific regulations for each fishery, these proposed procedures would be followed. Authority to allow exempted fishing in any regulated fishery would be established through the governing FMP and/or its implementing regulations.

Because exempted fishing has sometimes been confused with scientific research activity, this proposed rule would clarify NMFS' view that these are distinct activities. If an activity is undertaken in furtherance of exempted fishing, it would not be considered scientific research activity. NMFS proposes that collection of fish for display purposes, if otherwise prohibited by regulations governing that fishery, would fall within the scope of the definition for "exempted fishing." Standard procedures for application for EFPs under FMPs, issuance of EFPs by NMFS, and reporting requirements for persons fishing under an EFP are proposed in this rule. Prior to issuance of an EFP, an appropriate consideration of environmental impacts and of consistency with applicable law would be required.

In addition, NMFS proposes to define "exempted educational activity" for the domestic fishing regulations to distinguish between commercially oriented exempted fishing and those activities of very limited scope and duration, conducted by educational institutions, that may involve activities that are not in accordance with regulations implemented under authority of an FMP. Authority to allow exempted educational activity in any regulated fishery would be established through the governing FMP and/or its implementing regulations. Such activities, if determined to be valid by the appropriate NMFS Director or Regional Director, after consideration of consistency with the goals and objectives of the FMP and with other applicable law, could be authorized in writing by the Director or Regional Director to the sponsoring educational institution. The authorization would be required to be in the possession of the participant during the conduct of the exempted educational activity.

Examples of potentially valid exempted educational activities include:

(1) A small-scale trawl demonstration conducted for teaching purposes by a university vessel at a time fishing is closed to trawl gear; and (2) collection of a small number of fish for examination for educational purposes, when the fish are below a minimum size standard, in excess of bag limits, or during seasonal closures specified in regulations. The intent is to allow bona fide educational activities to take place, with minimal advance notice and paperwork, while still protecting the fishery resources. Fish harvested under authorized, exempted educational activities could not be traded, bartered, or sold. Activities outside the scope of the authorization would be considered "fishing" and subject to fishing regulations. These proposed procedures would serve as guidelines for fisheries until the regulations governing each fishery are amended to reflect this proposed rule.

NMFS proposes to redefine "Center Director" in the foreign fishing regulations at 50 CFR part 611 to reflect the correct title of "Fishery Science Center Director", note that there are five centers, and add definitions for "Center Director" and "Regional Director" to the domestic regulations at 50 CFR part 620. Appropriate tables are proposed to be amended in 50 CFR part 611.

NMFS also proposes to define "Director" to clarify that, where regulations so specify, the Director, Office of Fisheries Conservation and Management, NMFS, may be the appropriate contact, rather than a Regional Director. This would allow the Director, Office of Fisheries Conservation and Management, to process requests for exempted fishing or exempted educational activities on Atlantic highly migratory species (sharks, billfishes, swordfish, and tunas); management of these species is the responsibility of that office, rather than one of the NMFS regional offices.

This proposed rule is not intended to inhibit or prevent any scientific research activity that is conducted by a scientific research vessel, as defined in this proposed rule, nor is it intended to prevent exempted fishing conducted under an EFP issued under authority of an FMP or exempted educational activities authorized by the Director or Regional Director, consistent with the goals and objectives of an FMP. Proposed procedures for application for, and issuance of, EFPs and authorizations for exempted educational activities are intended to standardize these procedures nationwide for equity, clarity, and enforcement purposes.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, because it serves only to define terms; clarify distinctions between scientific research activity, exempted fishing, and exempted educational activities; and standardize procedures for applying for and issuing EFPs and authorizations for exempted educational activities as allowed under FMPs. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. This collection-of-information requirement has been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burden for this collection of information is estimated: (1) To average 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) to average 1 hour per response to complete an application for an EFP or authorization for an exempted educational activity; and (3) to average 1 hour per response to collect information and provide a report at the conclusion of exempted fishing. Send comments regarding this burden estimate, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 620

Fisheries, Fishing.

Dated: March 7, 1996.

Rolland A. Schmitten,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 611 and 620 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 is revised to read as follows:

Authority: 16 U.S.C. 971 *et seq.*, 1361 *et seq.*, 1801 *et seq.*, and 22 U.S.C. 1971 *et seq.*

2. In § 611.2, the definition for "Center Director" is revised and definitions for "Director", "Scientific cruise", "Scientific research activity", "Scientific research plan", and "Scientific research vessel", are added, in alphabetical order, to read as follows:

§ 611.2 Definitions.

* * * * *

Center Director means the Director of one of the five NMFS Fisheries Science Centers described in Table 1 of Appendix A to this subpart, or a designee.

* * * * *

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

* * * * *

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 U.S. 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 fish and shellfish (invertebrate) species considered to be a component of the fishery resources within the U.S. 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 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; and
- (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.

* * * * *

3. In § 611.7, paragraphs (a)(27) and (a)(28) are redesignated as paragraphs (a)(29) and (a)(30), respectively, and new paragraphs (a)(27) and (a)(28) are added to read as follows:

§ 611.7 Prohibitions.

- (a) * * *
 - (27) Fish in violation of the terms or conditions of any permit or authorization issued under the Magnuson Act;
 - (28) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state, territorial, or Federal regulations;

* * * * *

4. Section 611.14 is revised to read as follows:

§ 611.14 Scientific research activity.

(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 Center Director.

5. Table 1 to Appendix A to subpart A of part 611 is revised to read as follows:

Appendix A to Subpart A—Addresses, Areas of Responsibility and Communications

TABLE 1.—ADDRESSES

NMFS regional directors	NMFS Fisheries Science Center directors	U.S. Coast Guard commanders
Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930-2298; Telex: 940007; Telephone: 508-281-9300; FAX: 508-281-9333;	Director, Northeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 166 Water Street, Woods Hole, MA 02543-1097, Attn: Observer Program; Telex: 322200; Telephone: 508-548-5123; FAX: 508-548-5124.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York, NY 10004; Telex: 126831; Telephone: 212-668-7877.
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9721 Exec. Center Drive N., St. Petersburg, FL 33702; Telephone: 813-570-5301; FAX: 813-570-5300.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149-1003; Telephone: 305-361-5761; FAX: 305-361-4219.	Commander, Atlantic Area, U.S. Coast Guard, New York, NY 10004; Telex: 126831; Telephone: 212-668-7877.

TABLE 1.—ADDRESSES—Continued

NMFS regional directors	NMFS Fisheries Science Center directors	U.S. Coast Guard commanders
Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115; Telex: 9104442786; Telephone: 206-526-6150; FAX: 206-526-6426.	Director, Northwest Fisheries Science Center, National Marine Fisheries Service, NOAA, 2725 Montlake Boulevard East, Seattle, WA 98112-2097; Telephone: 206-442-1872; FAX: 206-442-4304.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, CA 94501; Telex: 172343; Telephone: 510-437-3700; FAX: 510-437-3017
Director, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 1668, Juneau, AK 99802-1668; Telex: 09945377; Telephone: 907-586-7221; FAX: 907-586-7249.	Director, Alaska Fisheries Science Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Seattle, WA 98115-0070; Telex: 329422; Telephone: 206-526-4000; FAX: 206-526-4004.	Commander, Seventeenth Coast Guard District, P.O. Box 3-5000, Juneau, AK 99801; Telex: 45305; Telephone: 907-586-7200 after hours:907-586-7350.
Director, Southwest Region National Marine Fisheries Service, NOAA, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802-4213; Telephone: 310-980-4001; FAX: 310-980-4018.	Director, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038-0271; Telephone: 619-546-7000; FAX: 619-546-7003.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96813; Telex: 392401; Telephone: 808-546-7597.

PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES

6. The authority citation for part 620 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

7. In § 620.2, definitions for “Center Director”, “Director”, “Exempted educational activity”, “Exempted fishing”, “Regional Director”, “Scientific cruise”, “Scientific research activity”, “Scientific research plan”, and “Scientific research vessel”, are added, in alphabetical order, to read as follows:

§ 620.2 Definitions.

* * * * *

Center Director means the Director of one of the five NMFS Fisheries Science Centers.

* * * * *

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

* * * * *

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 50 CFR part 285 and elsewhere in this chapter to

experimental fishing mean exempted fishing under this part.

* * * * *

Regional Director means the Director of one of the five NMFS Regions.

* * * * *

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 U.S. 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 fish and shellfish (invertebrate) species considered to be a component of the fishery resources within the U.S. EEZ. Scientific research activity does not include the collection and retention of fish that is 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.

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 (including the name and tonnage of vessel as soon as identified), 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 any research vessel(s) to be employed, and deployment and removal of equipment, as appropriate;
- (5) The 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, 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; and
- (8) The identity of any vessel(s) to be used, including, but not limited to, the

vessel's name, official documentation number or state registration number, 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. 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.

* * * * *

8. In § 620.7, paragraphs (i) through (l) are added to read as follows:

§ 620.7 General prohibitions.

* * * * *

(i) Fish in violation of the terms or conditions of any permit or authorization issued under the Magnuson Act.

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

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

(l) 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.

9. Section 620.10 is added to read as follows:

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

(a) *Scientific research activity.* Nothing in this part 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, and/or exploratory 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 exempted fishing permit (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 U.S. Coast Guard documentation, state license, or registration of each vessel, or the information contained on the appropriate document; and

(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; and

(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. 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 U.S. Coast Guard, 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 total allowable catch;

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

(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 above, 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) *Terms and conditions of EFPs.* 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; and

(H) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures as set out at part 603 of this chapter. 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 Center 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; and

(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; and

(F) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures at part 603 of this chapter. An applicant may be required to waive the right to confidentiality of information gathered while conducting experimental fishing as a condition of an EFP.

(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.

[FR Doc. 96-6193 Filed 3-14-96; 8:45 am]

BILLING CODE 3510-22-W