

***NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE 01-108
OCTOBER 28, 2003***

Fisheries Management

***EXEMPTED FISHING, SCIENTIFIC RESEARCH
PERMITS, AND LETTERS OF ACKNOWLEDGMENT***

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

October 28, 2003

MEMORANDUM FOR: Regional Administrators
Science Center Directors
Office Directors
W. Hogarth
FROM: William T. Hogarth, Ph.D.
SUBJECT: Exempted Fishing, Scientific Research Permits, and
Letters of Acknowledgment

This memorandum sets forth new NOAA Fisheries procedures for Exempted Fishing Permits (EFPs), Scientific Research Permits (SRPs), and Letters of Acknowledgment (LOAs), and identifies required action items. These changes are intended to accelerate issuance of such permits.

The attached White Paper describes the evolution and background of the EFP/SRP/LOA process, issues confronting the agency and constituents concerning the issuance of EFPs/SRPs/LOAs, and provides options and recommendations for consideration to improve the permitting process, while at the same time meeting the requirements of NEPA and strengthening the agency's management and science missions. Issues such as sale of fish under EFPs, when financial assistance program applicants need to apply for EFPs, and whether bycatch technology can be considered scientific research, require further consideration.

This document largely served as the basis for my decision to request the following actions be taken:

- 1 Encourage Regional Offices to establish an EFP, SRP, and LOA database for tracking, recordkeeping, and analyzing of such actions.
2. Effective January 1, 2004, Regional Offices will process all EFP notifications in the same fashion as meeting notices, i.e., they would go directly from the Regional Office to the F/SF5 Regulations Unit for format review and editing, and forwarding to the Office of the Federal Register. These notices should be prepared and forwarded as soon as the EFP application is received.
- 3 Front-load all analyses as early as possible so that NOAA PPI/SP can provide comments on the document early in the process.



4. Encourage Regional Offices to receive public comment at Council meetings, utilizing the provision in the current regulations that allows for this alternative. This may speed up the EFP process by removing the 15-45 day comment period and could be done by listing the specific EFPs to be discussed in the notice of the Council meeting published in the *Federal Register*.
5. Encourage Regional Offices to consider including a generic announcement that applications for EFPs may be reviewed when a Council meeting or Council committee meeting notice is published, and to take public comments at the meeting.
6. Encourage LOA recipients to share information with NOAA Fisheries, enforce the requirements that final reports be submitted by EFP recipients to NOAA Fisheries, and encourage information sharing on SRPs and LOAs between the Regional Office and Science Center.
7. Use the Leadership Council (LC) forum to discuss the feasibility of establishing a cut-off date(s) for receipt and consideration of EFPs.
8. Each Regional Office and Science Center will ensure that EFPs are issued only for proposals consistent with the goals and missions of NOAA Fisheries and that contain sufficient scientific merit. In the case of an SRP that is funded by and/or obtained by NOAA/NMFS, procedures identifying how NEPA documents will be prepared and reviewed, as well as information exchange about the approved SRP activity, must also be specified in the operating agreements between the Regional Offices and Science Centers.
9. Where possible, each RA/Science Center Director or designee will bundle NEPA analyses and/or prepare a comprehensive programmatic EA or EIS for EFPs/SRPs, rather than prepare EAs or EISs for individual EFPs and SRPs.
10. By January 1, 2004, for EFPs, SRPs, and any financial assistance relating to those activities, NOAA Fisheries' responsible program manager responsibilities for NEPA compliance will be delegated from the AA to the RA for all NEPA documents except a Programmatic EIS.
11. Through nationally coordinated proposed and final rulemaking, consider modifications to EFP definitions, add new definitions, revise existing definitions for certain regulatory terms, make technical changes, and amend the requirement to publish notice of EFPs in the *Federal Register*. Definitions could include compensation fishing, gear testing, scientific research activities, vessel observers, exempted fishing, exempted educational activities, and options for public comment. Rulemaking would clarify the terminology and applicability of EFPs and will take at least six months. By December 31, 2003, F/SF will develop a proposed rule to clarify or amend, as appropriate, the regulations concerning scientific research activities, including expanding the definition of a scientific

research activity to include some types of fishing gear-based research previously considered to be gear testing and, therefore, excluded from the definition of scientific research activity.

GCF has stated that they will continue to work with the Regional Attorneys to ensure that appropriate and timely legal review is provided for all documents relating to EFPs and SRPs.

I believe these new procedures will result in more timely issuance of EFPs and SRPs, provide opportunity for earlier solicitation and consideration of public input on EFP and SRP applications, and result in more robust analyses of these applications to meet our NEPA obligations. At the first LC meeting in calendar year 2004, I will ask each of you to report on progress in implementing these new procedures, and assess the need for any modifications.

Attachment

cc: Lent
Sissenwine
Oliver
Hansel
McCall
Wood
Holliday