

lease in million barrels of oil equivalent (MMBOE):

Water depth	Minimum royalty suspension volume (MMBOE)
(1) 200 to less than 400 meters	17.5
(2) 400 to less than 800 meters	52.5
(3) 800 meters or more	87.5

8. Section 260.117 is removed.
9. The title of § 260.124 and the introductory language of paragraph (b) are revised to read as follows:

§ 260.124 How will royalty suspension apply if MMS assigns a lease issued in a sale held after November 2000 to a field that has a pre-Act lease?

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(b) If we establish a royalty suspension volume for a field as a result of an approved application for royalty relief submitted for a pre-Act lease under part 203 of this chapter, then:

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 071121736-7619-01]

RIN 0648-AR78

Magnuson-Stevens Act Provisions; Experimental Permitting Process, Exempted Fishing Permits, and Scientific Research Activity

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, and procedural and technical changes to the regulations addressing scientific research activities, exempted fishing, and exempted educational activities under the Magnuson-Stevens Fishery Conservation and Management Act. This action is necessary to provide better administration of these activities and to revise the regulations consistent with the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA). NMFS intends to clarify the regulations, ensure necessary information to complete

required analyses is requested and made available, and provide for expedited review of permit applications where possible.

DATES: Comments must be received by March 20, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648-AR78, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- **Fax:** 301-713-1193, Attn: Jason Blackburn
- **Mail:** Alan Risenhoover, Director, Office of Sustainable Fisheries, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910, Attn: EFP Comments

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: NOAA Desk Officer), or email to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

Copies of the categorical exclusion (CE) prepared for this action are available from NMFS at the above address or by calling the Office of Sustainable Fisheries, NMFS, at 301-713-2341.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn at 301-713-2341, or by e-mail at jason.blackburn@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

On May 28, 1996, NMFS established procedures pertaining to scientific research, exempted fishing, and exempted educational activities (61 FR 26435). These procedures were established to provide minimum standards for dealing with scientific research, exempted fishing and exempted educational activities under the Magnuson-Stevens Act. These standards clarified the requirements for those managing and enforcing the fishery regulations, and for the public. These regulations were subsequently codified in 50 CFR part 600 (61 FR 32538, June 24, 1996). Shortly thereafter, the Magnuson-Stevens Act was amended by the Sustainable Fisheries Act, which included important provisions dealing with essential fish habitat (EFH), rebuilding of overfished fisheries, and the requirement to minimize bycatch and bycatch mortality to the extent practicable. These new requirements resulted in an increased interest in fisheries research.

On January 12, 2007, the MSRA was enacted. Section 204 of the MSRA added a new Cooperative Research and Management Program section (Section 318) to the MSA. Section 318(d) of the revised MSA requires that the Secretary, through NMFS, “promulgate regulations that create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits.”

A major reason for the expansion in fisheries research has been the need to minimize bycatch and the mortality of bycatch as required under National Standard 9 of the Magnuson-Stevens Act. Much of this effort has been concentrated on studies investigating fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch and promote the efficient harvest of target species.

Over the years, many questions have arisen regarding the differences between a scientific research activity and fishing and how NMFS interprets each type of activity under the implementing regulations. The existing regulations

contain three authorizations for catching fish outside prescribed fishing regulations: Scientific research from a scientific research vessel, exempted fishing under NMFS-issued exempted fishing permits (EFPs), and exempted educational activities. As these types of activities have increased in both volume and variety, NMFS and the affected public have identified several aspects of the regulations that could be improved in order to streamline the permitting of exempted fishing and exempted educational activities, and the acknowledgment of scientific research.

Proposed Changes from the Current Regulations

NMFS is proposing substantive and administrative changes to the current regulations, including revising and adding definitions; clarifying the differences among scientific research, exempted fishing, and exempted educational activities; clarifying the difference between conservation engineering and gear testing; clarifying the need for and extent of data required to be collected in conjunction with exempted fishing and exempted educational activities; clarifying the application process for obtaining an EFP; exempting research projects funded by quota set-asides from the requirement to publish separate notices; and defining whether and to what extent the NMFS Observer Program requires EFPs. These topics are discussed in more detail below.

Changes to Existing Definitions

In § 600.10 Definitions, three definitions would be added and several others revised. As part of the Sustainable Fisheries Act, Congress authorized the Secretary of Commerce (Secretary) to use private sector vessels, equipment, and services to conduct fisheries resource surveys. The Secretary is authorized to structure competitive solicitations to compensate a contractor for a fishery resources survey (i.e., "compensation fishing") by allowing the contractor to retain for sale fish harvested during the survey. If, however, the contractor is not expected to harvest during the survey the quantity or quality of fish that would allow for adequate compensation for the survey, the Secretary is authorized to structure the solicitation so as to provide that compensation by allowing the contractor to harvest on a subsequent voyage, and retain for sale, a portion of the allowable catch of the fishery as specified in a contract or EFP. Foreign vessels would not be allowed to engage in compensation fishing outside the scope of the applicable scientific

research plan, or outside the time frame in which the actual scientific research activity is being conducted.

This proposed rule would define "compensation fishing" and authorize, as appropriate, this activity as a reason for issuing an EFP. Compensation fishing as described under section 402(e)(2)(B) of the Magnuson-Stevens Act would be authorized through an EFP. It is proposed that in cases where exemptions are not needed, compensation fishing could be conducted without an EFP. An example of this is the Mid-Atlantic Research Set-aside (RSA) program, where research projects are funded through compensation fishing. In the RSA program, vessels are either issued a Letter of Acknowledgment (LOA) or an EFP. Vessels receive an LOA if they will be conducting research. Vessels receive an EFP if they will be compensation fishing and need an exemption from the regulations. For example, an EFP would be needed for a participating vessel to harvest and land their quota during a fishery closure. The compensation fishing provisions within the NMFS general regulations dealing with scientific research and exempted fishing (§ 600.745), would apply unless fishery-specific compensation fishing regulations are in place, such as those in the West Coast Groundfish regulations (§ 660.350).

A new definition would also be added for "conservation engineering." Section 404(c)(2) of the Magnuson-Stevens Act describes conservation engineering as an area of research that includes the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch, promote efficient harvest of target species, and minimize adverse effects on EFH. Because a significant number of fishery stocks are either overfished or experiencing overfishing, NMFS is concerned that bycatch of these species will make it more difficult to control mortality. Conservation engineering has become an important field of research and has led to cooperative research ventures involving NMFS, researchers, and fishermen.

For the same reasons that conservation engineering has become important, NMFS is concerned about its potential impacts on fishery resources. Conservation engineering activities often take commercial quantities of fish. In the past, these projects have been considered fishing and not scientific research because the Magnuson-Stevens Act definition of scientific research, as interpreted at § 600.10, excludes "the testing of fishing gear." NMFS believes

the mortality associated with conservation engineering work needs to be properly accounted for. In addition, NMFS wants to ensure that conservation engineering activities do not adversely affect fisheries resources. To best protect fisheries resources while allowing conservation engineering activities, NMFS proposes to define conservation engineering based on section 404(c)(2) of the Magnuson-Stevens Act in a manner that best protects fisheries resources while allowing conservation engineering activities. NMFS also proposes to define "gear testing" to differentiate it from conservation engineering. Gear testing would be defined as an at-sea activity with its sole purpose being the testing of the functionality of fishing gear. When a vessel is performing gear testing, it may not retain fish, and it must meet the specific requirements of any regulation that pertains to fishing and/or gear testing in the applicable fishery. For example, the Alaska management measures require that trawl gear testing must be performed within specified trawl gear test areas.

Some conservation engineering activities would not qualify as a scientific research activity, and would more appropriately require an EFP. To be classified as scientific research:

- At-sea research must meet the criteria for scientific research activity laid out in the regulations, and occur aboard a scientific research vessel;
- A research activity must address a testable hypothesis;
- A research activity must follow a scientific plan that includes sufficient observations and appropriate experimental design to test the hypothesis;
- A research activity must address a fishery management problem or issue;
- All fish captured for research must be necessary to meet the objectives of the experimental design, i.e. the sample size needed to prove or disprove the hypothesis. (This does not include fish captured for compensation fishing).

For example, in the development of a bycatch reduction device, research could be conducted to assess the behavior of target and bycatch species to detect exploitable differences, to determine whether prototype gear modifications achieve the desired stimuli and escape opportunities, to test whether fish respond to those stimuli as expected, or to examine whether a prototype device achieves the expected species separation. If these activities are conducted on a scientific research vessel then an LOA would be sufficient, whereas if these activities are conducted on a vessel not meeting the definition of

a scientific research vessel, then an EFP would be required. However, an opportunity for vessels to conduct sea trials of the resulting devices as proof of concept to determine their practicality and effectiveness with their gear and procedures in actual fishing conditions might qualify for an EFP, but would not be scientific research.

Technical Revisions to Definitions

Several technical revisions are proposed to be made to the Definitions section. In the definitions for “exempted educational activity” and “exempted or experimental fishing,” the words “part 635 or” would be removed as redundant, since part 635 is a part of chapter VI of title 50. In the definitions for “region,” “Regional Administrator,” and “Science and Research Director,” the word “five” would be changed to “six” to reflect the creation of the new NMFS Pacific Islands Region and NMFS Pacific Islands Fisheries Science Center. In the definition of “scientific research activity,” in the second sentence, the words “or to test a hypothesis” would be revised to read “and to test a hypothesis,” making this definition consistent with the new definition of conservation engineering. In the third sentence, the word “issues” would be revised to read “topics” to better describe the object of the research, and the words “or other collateral fishing effects” would be added following the word “bycatch” to encompass the range of potential impacts of fishing on the environment. In the fourth sentence, the words “unless it meets the definition of conservation engineering” would be added following “or the testing of fishing gear” to clarify that conservation engineering may be permissible. In addition, an example is provided to clarify what is meant by “the testing of fishing gear.”

In § 600.512(a), for foreign fishing, and § 600.745(a), for domestic fishing, the procedures for acknowledging scientific research activity would be revised by adding “aboard scientific research vessels” to clarify that these sections apply only to scientific research activities aboard scientific research vessels in the Exclusive Economic Zone (EEZ).

To clarify who the designee could be for the Regional Administrator or Director, §§ 600.512(a) and 600.745(a) would be revised so that the Regional Administrator having responsibility for the fishery or the Director of the Office of Sustainable Fisheries (for Atlantic highly migratory species) would be primarily responsible for the issuance of LOAs, but that this responsibility may be delegated to an appropriate NMFS

Science and Research Director, or the Assistant Regional Administrator for Sustainable Fisheries.

The current regulations note that the LOA “is separate and distinct from any permit required under any other applicable law.” For laws administered by NMFS, this reference applies to incidental take permits under the Marine Mammal Protection Act (MMPA) or section 10 permits or consultations under the Endangered Species Act (ESA). There may be additional permits required (e.g., from the Corps of Engineers) that are not under the jurisdiction of NMFS. Since the MMPA and ESA are administered by NMFS by the same officials who issue LOAs, it is appropriate for NMFS to consider the effect of the research under the provisions of these laws when the request for the LOA is being reviewed. Therefore, §§ 600.512(a) and 600.745(a) would be modified to indicate that the MMPA and ESA are two laws that may require an additional permit or consultation. NMFS would undertake an initial review of a request for an LOA to determine if any additional permit or consultation is needed. If, after an initial review, the Regional Administrator or Director believes that such a permit or consultation is required and none has been completed, the Regional Administrator or Director would not issue an LOA until required permits are issued and consultations completed. A research vessel that conducts operations without these authorizations may potentially be found in violation of the applicable law.

In addition to the foregoing changes, §§ 600.512(a) and 600.745(a) are proposed to have additional clarifying language added regarding revisions to the scientific research plan and to the rebuttable presumption that a vessel is a scientific research vessel conducting scientific research.

In § 600.745(b)(1), as previously discussed, compensation fishing is proposed to be added as a reason for an EFP. Similarly, although conservation engineering potentially could be described under several other reasons for requesting an EFP, it is proposed to be added as a specific reason for an EFP because of its increasing use in determining ways of avoiding bycatch and the extent of conservation engineering activities.

It has not always been clear to authorized officers or the exempted fishing permittee which regulations they have been exempted from. To provide a clear record of what regulatory exemptions apply to a particular EFP, § 600.745(b)(1) is also proposed to be revised to clearly indicate that a vessel

with an EFP is only exempt from those regulations specified in the EFP.

Changes to Application and Permit Process

In § 600.745(b)(2)(v), NMFS proposes that an applicant for an EFP provide any anticipated impacts of the proposed activity on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH, as part of an EFP application. Under the National Environmental Policy Act (NEPA), NMFS must make a determination regarding the environmental impact of any permitted activity. This NEPA determination is usually in the form of a CE (i.e., a category of actions which do not individually or cumulatively have a significant effect on the environment and which have been found to have no such effect and for which neither an environmental assessment (EA) or environmental impact statement (EIS) is required), which includes reference to any relevant previous NEPA analysis. Under some circumstances, an activity might require an EA or what may be even more rare, an EIS. Similarly, under § 600.920, NMFS must make a determination of the impact on EFH of any permitted activity and, therefore, needs to be provided with any available information on the activity that has a potential effect on EFH. NMFS recognizes that applicants have routinely provided this type of information as part of their application. This proposed change would document the current practice and clarify the reasons for collecting the information.

A series of changes are proposed in the application process to speed public notification and allow for timely review of an application.

The current regulations state, “... 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 and/or comments will be requested during public testimony at a Council meeting.” NMFS proposes to revise this language to remove “and the intent of NMFS to issue an EFP.” The decision to issue an EFP should come after the public notice and comment process. NMFS also proposes to revise the language allowing public discussion of EFP applications at Council meetings, to clarify that Council meeting notices are not a substitute for publishing **Federal Register** notices for EFP applications, but are instead supplemental to that process. If the Council intends to take comments on

EFP applications at a Council meeting, it must include a statement to this effect in the Council meeting notice and meeting agenda. Multiple applications for EFPs may be published in the same **Federal Register** document and may be discussed under a single Council agenda item.

MSA section 318(f) specifically exempts research projects funded by quota set-asides from any new procedures established under section 318. There are existing procedures in place for processing EFP applications associated with these projects, which are necessary for NMFS to properly evaluate and analyze each project's compliance with NEPA, ESA, and MMPA requirements. NMFS believes the current procedures are beneficial to our process and help streamline the review and issuance of EFPs for quota set-aside programs. Therefore, these procedures will be retained. To further expedite the review of EFP applications for such projects, research projects funded through quota set-asides, such as those that participate in the Mid-Atlantic RSA program, will be exempted from the requirement to publish a separate **Federal Register** notice for each EFP application. Notice of selected Mid-Atlantic RSA projects is provided in the RSA section of the annual specifications notice that is published for each fishery management plan with an RSA program. An EA is normally prepared and analyzes the potential impacts of the selected RSA projects as part of each annual specifications process. The majority of the current quota set-aside funded projects are conducted in Northeast fisheries that are managed by the Mid-Atlantic Council. Examples of Mid-Atlantic RSA programs include: summer flounder, scup, black sea bass, squid, and monkfish. In addition, the New England Council has an RSA program for Atlantic sea scallops. RSA projects go through two concurrent processes before they receive their EFPs. There is a grant process, and an EFP process. Since 2003, the NMFS Northeast regional office has streamlined the RSA processes, particularly the EFP application and issuance process. The existing process accommodates variability, as not all fisheries or projects operate in the same manner.

NMFS proposes that § 600.745(b)(3)(i)(C) be revised to include impacts on fisheries and EFH.

In § 600.745(b)(3)(ii), current language states, "The Council(s) or the Administrator or the Regional Administrator 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." The language is proposed to be revised to clarify that the applicant has a right to be present and make comments only at public meetings.

In § 600.745(b)(3)(iii), new language is proposed to be inserted that would clarify that NMFS would issue EFPs only after all required analyses and consultations (e.g., NEPA, EFH, ESA and MMPA) have been completed. This is in effect what currently occurs. In § 600.745(b)(3)(iii)(B), confusing language is proposed to be removed and in § 600.745(b)(3)(iii)(C) the language is clarified to indicate that while purely economic allocations could be grounds for a denial, compensation fishing should not be a reason to deny an EFP.

NMFS is proposing language to clarify what terms and conditions should be included in an EFP. As previously discussed, a new paragraph (C) would be added to § 600.745(b)(3)(v) to require that the EFP cite the specific regulations exempted. The subsequent paragraphs would be renumbered accordingly, and the renumbered paragraph (F) would be revised to indicate that observers and electronic monitoring devices may be required. Renumbered paragraph (G) would be revised to specify acceptable records for data reporting and to indicate that incidental catch and bycatch must be reported in all EFPs.

A new paragraph (4) would be added to § 600.745(b) to require that EFP holders must date and sign the permit, and return a copy of the original to the NMFS Regional Administrator or Director, to acknowledge the terms and conditions of the permit. The permit is not valid until signed by the holder. The subsequent paragraphs would be renumbered accordingly.

In § 600.745(b)(5), language relating to revocation, suspension or modification of permits would be removed, as these activities are described in § 600.745(b)(9).

In § 600.745(c)(1), clarifying language is proposed to indicate that NMFS is requesting the research information, and to clarify that the request is made for research exempted from the Magnuson-Stevens Act (research activity conducted from a scientific research vessel).

Section 600.745(c)(2) would be revised to specify that persons operating under EFPs must report their catch at the end of the EFP activity, or at specified intervals during the course of the exempted fishing activity, as determined by the Regional Administrator or Director. This supports the previous discussion and proposed changes concerning the importance of

documenting all catch and bycatch related to EFPs.

Exempted educational activities are a subset of EFPs issued exclusively for educational purposes, i.e., the instruction of an individual or group, and allowing the capture of enough fish to demonstrate the lesson. Section 600.725(n) specifies that the trade, barter, or sale of any fish taken under an exempted educational activity is prohibited. This language is proposed to be repeated in § 600.745(d)(1) for clarity and ease of reference.

Consistent with the discussion regarding EFP applications in § 600.745(b)(2)(v), it is proposed that an applicant for an exempted educational activity provide any anticipated impacts of the proposed activity on the environment; including the fishery, marine mammals, threatened or endangered species, and EFH; as part of an exempted educational activity application.

Section 600.745(d)(3)(ii) would be revised to indicate that terms and conditions are mandatory for exempted educational activities in order to regulate and track catches, consistent with the proposed requirements of § 600.745(b)(3)(v).

As with EFPs, several clarifications are proposed to specify what may be included in the terms and conditions for exempted educational activities. In § 600.745(d)(3)(ii), a new paragraph (B) would be added to require that the exempted educational activity authorization cite the specific regulations exempted. The subsequent paragraphs would be renumbered accordingly, and renumbered paragraph (E) would be revised to specify acceptable records for data reporting.

In § 600.745(d)(3)(iii) and § 600.745(d)(7), NMFS proposes adding language that would require the exempted educational activity authorization specify the person(s) who will be in charge and present for the exempted educational activity to proceed. This would emphasize the educational nature of the activity and provide more assurance that the activity would be carried out as specified in the exempted educational activity authorization.

EFP Requirements for NMFS Observer Program

There have been questions regarding when, or if, observer programs are required to obtain EFPs in order for those observers to conduct catch sampling, biological studies, and retain fish for further analysis when doing so would be in violation of the applicable fishing regulations. In addition, the

fisheries use several types of NMFS-sanctioned observers, including NMFS employees, NMFS contracted observers, and third party contractors who are permitted by NMFS to provide observers in the fishery. There are also various other programs that provide "sea samplers" on fishing vessels: Universities, states, and industry groups. In § 600.745, a new paragraph (e) would exempt observers in the NMFS-sanctioned observer programs described above from the requirement to obtain an EFP. Other programs could continue to provide sea samplers, but would need an EFP to retain prohibited species or otherwise act in contravention of the published regulations.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the provisions of section 318(d) and 305(d) of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would provide clarifications of current regulations and information requirements, as well as other administrative requirements regarding scientific research, exempted fishing, and exempted educational activities. The proposed rule would serve only to define terms, clarify distinctions among 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 EFPs.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB. The public reporting burden for this collection of information is estimated: (1) To average 6 hours per response to send NMFS a copy of a scientific research plan and average 1 hour per response to provide a copy of the cruise report or research publication; (2) to average 1 hour per

response to complete an application for an EFP and average 0.5 hours per response or authorization for an exempted educational activity; and (3) to average 2 hours per response to provide a report at the conclusion of exempted fishing and average 0.5 hours per response to provide a report at the conclusion of exempted educational activities, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Office of Sustainable Fisheries at the ADDRESSES above, and email to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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 in 50 CFR Part 600

Fisheries, Fishing.

Dated: December 18, 2007.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons stated in the preamble, NMFS proposes to amend 50 CFR part 600 as follows:

PART 600 MAGNUSON—STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* & 1801 *et seq.*

2. In § 600.10, definitions for "Exempted educational activity", "Exempted or experimental fishing", "Region", "Regional Administrator", "Science and Research Director", and "Scientific research activity" are revised, and definitions for "Compensation fishing", "Conservation

engineering", and "Gear testing" are added, in alphabetical order, to read as follows:

§ 600.10 Definitions.

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Compensation fishing means fishing conducted for the purpose of recovering costs associated with resource surveys and scientific studies that support the management of a fishery, or to provide incentive for participation in such studies. Compensation fishing may include fishing prior to, during, or following such surveys or studies. Foreign vessels that qualify as scientific research vessels and which are engaged in a scientific research activity may only engage in compensation fishing during the scientific research cruise and in accordance with the applicable scientific research plan. Compensation fishing must be conducted under an EFP if the activity would otherwise be prohibited by regulations under this part.

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Conservation engineering means the study of fish behavior and the development and testing of new gear technology and fishing techniques that reduce collateral effects, such as minimizing bycatch and any adverse effects on EFH, and promote efficient harvest of target species. Conservation engineering is considered to be scientific research if it would otherwise meet the definition of a scientific research activity and is conducted by a scientific research vessel. Otherwise, conservation engineering is considered to be fishing, and must be conducted under an EFP if the activity would otherwise be prohibited by regulations under this part.

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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 this chapter VI, but that is authorized by the appropriate Regional Administrator or Director for educational purposes.

Exempted or experimental fishing means fishing from a vessel of the United States that involves activities otherwise prohibited by this chapter VI, but that are authorized under an EFP. The regulations in § 600.745 refer exclusively to exempted fishing. References elsewhere in this chapter to experimental fishing mean exempted fishing under this part.

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Gear testing means at-sea activity for the purpose of testing the functionality

of fishing gear. During this type of activity, no fish may be retained aboard the vessel. Regional fishery regulations may specify additional requirements that would apply to this activity, such as using designated gear testing areas, testing trawl nets with the codend(s) open, or testing during closed seasons.

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Region means one of six NMFS Regional Offices responsible for administering the management and development of marine resources in the United States in their respective geographical areas of responsibility.

Regional Administrator means the Director of one of the six NMFS Regions.

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Science and Research Director means the Director of one of the six NMFS Fisheries Science Centers described in Table 1 of § 600.502 of this part, or a designee, also known as a Center Director.

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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-Stevens 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 EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, and 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 topics involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch or other collateral fishing effects, conservation engineering, and catch estimation of finfish and shellfish (invertebrate) species considered to be a component of the fishery resources within the 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, unless it meets the definition of conservation engineering. For example, the testing of fishing gear to examine fish behavior in response to a bycatch reduction device would be conservation engineering and

a scientific research activity, and would therefore not require an EFP. On the other hand, the testing of fishing gear to examine the gear's ability to catch more fish would not be conservation engineering or a scientific research activity, and would therefore be fishing and might require an EFP. Data collection designed to capture and land quantities of fish 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.

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3. In § 600.512, paragraph (a) is revised to read as follows:

§ 600.512 Scientific research.

(a) *Scientific research activity.* Persons planning to conduct scientific research activities aboard a scientific research vessel in the EEZ that may be confused with fishing are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Administrator or Director 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 (LOA). This LOA is separate and distinct from any permit or consultation required under the Marine Mammal Protection Act, the Endangered Species Act, or any other applicable law. If the Regional Administrator or Director believes that such a permit or consultation is required, the Regional Administrator or Director will not issue the LOA until the vessel obtains such a permit or the consultation is completed. If the Regional Administrator or Director, after review of a research plan, determines that it does not constitute scientific research activity but rather fishing, the Regional Administrator or Director will inform the applicant as soon as practicable and in writing. The Regional Administrator or Director may designate a Science and Research Director, or the Assistant Regional Administrator for Sustainable Fisheries, to receive scientific research plans and issue LOAs. The Regional Administrator, Director, or designee may also make recommendations to revise the research plan to ensure the cruise will be considered to be a scientific research activity. In order to facilitate identification of the activity as scientific research, persons conducting

scientific research activities are advised to carry a copy of the scientific research plan and the LOA 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. An authorized officer may overcome this presumption by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

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4. In § 600.745:

A. Redesignate paragraphs (b)(3)(v)(C) through (H) as paragraphs (b)(3)(v)(D) through (I), respectively.

B. Redesignate paragraphs (b)(4) through (8) as paragraphs (b)(5) through (9), respectively.

C. Redesignate paragraphs (d)(3)(ii)(B) through (F) as paragraphs (d)(3)(ii)(C) through (G), respectively.

D. Add paragraphs (b)(3)(v)(C), (b)(4), (d)(3)(ii)(B), and (e).

E. Revise paragraphs (a), (b)(1), (b)(2)(v), (b)(3)(i) introductory text, (b)(3)(i)(C), (b)(3)(ii), (b)(3)(iii) introductory text, (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(v) introductory text, (b)(3)(v)(F), (b)(3)(v)(G), (b)(5), (c), (d)(1), (d)(2)(vii), (d)(3)(ii) introductory text, (d)(3)(ii)(E), (d)(3)(iii), and (d)(7).

The revisions and additions read as follows:

§ 600.745 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 aboard a scientific research vessel in the EEZ are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Administrator or Director 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 (LOA). This LOA is separate and distinct from any permit or consultation required by the Marine Mammal Protection Act, the Endangered Species Act, or any other applicable law. If the Regional Administrator or Director believes that such a permit or consultation is required, the Regional Administrator or Director will not issue the LOA until the vessel obtains such a permit or the consultation is completed. If the Regional Administrator or

Director, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Administrator or Director will inform the applicant as soon as practicable and in writing. The Regional Administrator or Director may designate a Science and Research Director, or the Assistant Regional Administrator for Sustainable Fisheries, to receive scientific research plans and issue LOAs. The Regional Administrator, Director, or designee may also make recommendations to revise the research plan to ensure the cruise will be considered to be scientific research activity or recommend the applicant request an EFP. In order to facilitate identification of the activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the LOA 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. An authorized officer may overcome this presumption 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) * * *

(1) *General.* A NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal 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 EFP issued by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. An EFP exempts a vessel only from those regulations specified in the EFP. All other applicable regulations remain in effect. The Regional Administrator 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 Administrator or Director to determine the applicable fee.

(2) * * *

(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 the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and essential fish habitat.

* * * * *

(3) * * *

(i) The Regional Administrator 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 Administrator 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 Administrator 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. Research projects funded by quota set-asides, such as those that participate in the Mid-Atlantic RSA program, are exempt from the requirement to publish such a notice. Interested persons will be given a 15- to 45-day opportunity to comment on the notice of receipt of the EFP application. In addition comments may be requested during public testimony at a Council meeting. If the Council intends to take comments on EFP applications at a Council meeting, it must include a statement to this effect in the Council meeting notice and meeting agenda. Multiple applications for EFPs may be published in the same **Federal Register** document and may be discussed under a single Council agenda item. 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 Administrator 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:

* * * * *

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

(ii) If the application is complete and warrants additional consultation, the

Regional Administrator 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 Regional Administrator or Director shall notify the applicant in advance of any public 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 a complete application, including all required analyses and consultations (e.g., NEPA, EFH, ESA and MMPA), and having received responses from the public, the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Administrator or Director shall issue the EFP or notify the applicant in writing of the decision to 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:

* * * * *

(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, threatened or endangered species or essential fish habitat; or

(C) Issuance of the EFP would have economic allocation as its sole purpose (other than compensation fishing); or

* * * * *

(v) The Regional Administrator or Director may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

* * * * *

(C) A citation of the regulations from which the vessel is exempted.

* * * * *

(F) Whether observers, a vessel monitoring system, or other electronic equipment must be carried on board vessels operated under the EFP, and any necessary conditions, such as predeployment notification requirements.

(G) Data reporting requirements necessary to document the activities and to determine compliance with the terms and conditions of the EFP and established time frames and formats for submission of the data to NMFS.

* * * * *

(4) *Acknowledging permit conditions.* Upon receipt of an EFP, the holder must date and sign the permit, and return a copy of the original to the NMFS Regional Administrator or Director. The permit is not valid until signed by the holder. In signing the permit, the holder:

(i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations under this subpart; and

(ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization and revocation by the Regional Administrator or Director.

(5) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is valid for no longer than 1 year. EFPs may be renewed following the application procedures in this section.

* * * * *

(c) *Reports.* (1) NMFS requests persons conducting scientific research activities from scientific research vessels 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 Science and Research Director.

(2) Upon completion of the activities of the EFP, or periodically as required by the terms and conditions of the EFP, persons fishing under an EFP must submit a report of their catches and any other information required, to the appropriate Regional Administrator or Director, in the manner and within the time frame specified in the EFP. The report must be submitted to the Regional Administrator or Director no later than 6 months after concluding the exempted fishing activity. Persons conducting EFP activities are also requested to submit a copy of any

publication prepared as a result of the EFP activity.

(d) * * *

(1) *General.* A NMFS Regional Administrator 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 trade, barter or sale of fish taken under this authorization is prohibited. The decision of a Regional Administrator 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 Administrator or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) * * *

(vii) The species and amounts expected to be caught during the exempted educational activity, and any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

* * * * *

(3) * * *

(ii) The Regional Administrator or Director may attach terms and conditions to the authorization, consistent with the purpose of the exempted educational activity and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

* * * * *

(B) A citation of the regulations from which the vessel is being exempted.

* * * * *

(E) Data reporting requirements necessary to document the activities and

to determine compliance with the terms and conditions of the exempted educational activity.

* * * * *

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), persons, species, and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

* * * * *

(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 the possession of at least one of the persons identified in the authorization, who must be present 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.

(e) *Observers.* NMFS-sanctioned observers or biological technicians conducting activities within NMFS-approved observer protocols are exempt from the requirement to obtain an EFP. For purposes of this section, NMFS-sanctioned observers or biological technicians include NMFS employees, NMFS observers, observers who are employees of NMFS-contracted observer providers, and observers who are employees of NMFS-permitted observer providers.

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