

U.S. Fish and Wildlife Serv., Interior

§ 18.82

(2) Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing otherwise specifies.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(f) Contemporaneous with the publication of the notice of hearing, the Director's direct testimony in support of the proposed regulations and waiver, where applicable, shall be available for public inspection as specified in the notice of hearing. The Director may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 18.78 Mailing address.

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Presiding Officer, c/o Director, U.S. Fish and Wildlife Service, Washington, DC 20240. All affidavits and exhibits shall be clearly marked with the docket number of the proceedings.

§ 18.79 Inspection and copying of documents.

Any document in a file pertaining to any hearing authorized by this subpart or any document forming part of the record of such a hearing may be inspected and/or copied in the Office of the Director, U.S. Fish and Wildlife Service, Washington, DC 20240, unless the file is in the care and custody of the presiding officer, in which case he shall notify the parties as to where and when the record may be inspected.

§ 18.80 Ex parte communications.

(a) After notice of a hearing is published in the FEDERAL REGISTER, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Director, Deputy Director or Marine Mammal Coordinator, U.S. Fish and Wildlife Service, without reference to these

rules of procedure, shall be deemed ex parte communications and are not to be considered part of the record for decision.

(b) A record of oral conversations shall be made by the above persons who are contacted. All communications shall be available for public viewing at times and place(s) specified in the notice of hearing.

(c) The presiding officer shall not communicate with any party on any fact in issue or on the merits of the matter unless notice and opportunity is given for all parties to participate.

§ 18.81 Prehearing conference.

(a) After an examination of all the direct testimony submitted pursuant to § 18.77, the presiding officer shall make a preliminary determination of issues of fact which may be addressed at the hearing.

(b) The presiding officer's preliminary determination shall be made available at the place or places provided in the notice of the hearing (§ 18.74(b)(8)) at least five days before the prehearing conference is held.

(c) The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer's preliminary determination of issues of fact for the hearing has omitted any significant issues;

(2) What facts are not in dispute;

(3) Which witnesses may appear at the hearing; and

(4) The nature of the interest of each party and which parties' interests are adverse.

(d) Only parties may participate in the prehearing conference, and a party may appear in person or be represented by counsel.

§ 18.82 Prehearing order.

(a) After the prehearing conference, the presiding officer shall prepare a prehearing order which shall be published in the FEDERAL REGISTER within ten days after the conclusion of the conference. A copy of the prehearing order shall be mailed to all Parties.

(b) The prehearing order shall list: (1) All the issues which the hearing shall