and section 557 of the Administrative Procedure Act. The regulations shall be construed to secure the just, speedy and inexpensive determination of all issues raised with respect to any waiver or regulation proposed pursuant to section 103(d) of the Act with full protection for the rights of all persons affected thereby.

§ 228.4 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the Federal Register, together with the Assistant Administrator’s proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) of the Act (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

(1) The nature of the hearing;
(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;
(3) The legal authority under which the hearing is to be held;
(4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));
(5) Issues of fact which may be involved in the hearing;
(6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;
(7) Any written advice received from the Marine Mammal Commission;
(8) The place(s) where records and submitted direct testimony will be kept for public inspection;
(9) The final date for filing with the Assistant Administrator a notice of intent to participate in the hearing pursuant to §228.5;
(10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;
(11) The docket number assigned to the case which shall be used in all subsequent proceedings; and
(12) The place and date of the prehearing conference.

§ 228.5 Notification by interested persons.

Any person desiring to participate as a party shall notify the Assistant Administrator, by certified mail, on or before the date specified in the notice.

§ 228.6 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to §228.4, the Assistant Administrator shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

(1) Change the time and place of the hearing and adjourn the hearing;
(2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the Federal Register a final hearing agenda;
(3) Rule upon motions, requests and admissibility of direct testimony;
(4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;
(5) Modify or waive any rule (after notice) when determining that no party will be prejudiced;
(6) Receive written comments and hear oral arguments;
(7) Render a recommended decision; and
(8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or the original presiding officer’s inability to act, the powers and duties to be performed by the original presiding officer under this subpart in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer unless otherwise ordered by the Assistant Administrator.

(d) The presiding officer may upon the presiding officer’s own motion
§ 228.10 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 Assistant Administrator, Deputy Assistant Administrator, or Chief of the Marine Mammal Division, National Marine Fisheries Service, without reference to these rules of procedure, shall be deemed ex parte communications and

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

(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 Assistant Administrator’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 Assistant Administrator may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 228.7 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing (§228.4), the final hearing agenda (§228.12), or within 15 days after the conclusion of the prehearing conference (§228.14) as the case may be. All direct testimony shall be in affidavit form and exhibits constituting part of such testimony, referred to in the affidavit and made a part thereof, must be attached to the affidavit. Direct testimony submitted with exhibits must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the Federal Register.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness’ interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state the witness’ relationship to the party; and

(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.