

§ 18.70 Basis and purpose.

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), and 1371(b)) and these regulations authorize the Director, U.S. Fish and Wildlife Service, to: (1) Impose regulations governing the taking of marine mammals incidental to commercial fishing operations; (2) waive the moratorium and adopt regulations with respect to the taking and importing of animals from each species of marine mammals under his jurisdiction; and (3) prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the act refers the Director to section 103 (16 U.S.C. 1373). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Director to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)).

(b) [Reserved]

§ 18.71 Definitions.

Definitions shall be the same as in subpart A of this part except as follows:

(a) *Party* means for the purposes of this subpart:

(1) The Director or his representative; or

(2) A person who has notified the Director by specified dates of his or her intent to participate in the hearing pursuant to §§ 18.75 and 18.84(b).

(b) *Presiding officer* means, for the purposes of this subpart, an administrative law judge of the Office of Hearings and Appeals appointed in accordance with 5 U.S.C. 3105.

(c) *Witness* means, for the purposes of this subpart, any person who provides direct testimony on the proposed regulations and waiver. A person may be both a party and a witness.

§ 18.72 Scope of regulations.

The procedural regulations in this subpart govern the practice and procedure in hearings held under section 103(d) of the Act. These hearings will be

governed by the provisions of sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. 556 and 557). The regulations shall be construed to secure the just, speedy, and inexpensive determination of all issues raised with respect to any waiver and/or regulation proposed pursuant to section 103(d) of the act in a manner which gives full protection to the rights of all persons affected thereby.

§ 18.73 Burden of proof.

The proponents of the proposed regulations and waiver must demonstrate that any taking or importation of any marine mammal under such proposed regulations and waiver would be consistent with the act.

§ 18.74 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the FEDERAL REGISTER, together with the Director's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) (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 an Environmental Impact Statement is required, the date of publication of the Statement and the times and place(s) where the Statement and comments thereon may be viewed and copied;

(7) Any written advice received from the Marine Mammal Commission;

(8) The times and place(s) where records and submitted direct testimony will be kept for public inspection, along with appropriate references to any other documents;

(9) The final date for filing with the Director a notice of intent to participate in the hearing pursuant to § 18.75;