

**Marine Scientific Research and the
Magnuson-Stevens Fishery Conservation and Management Act,
16 U.S.C. §1801 *et seq.***

The Magnuson-Stevens Fishery Conservation and Management Act (Act) regulates foreign and domestic fishing activities within the United States Exclusive Economic Zone. The Act explicitly exempts scientific research conducted by a scientific research vessel from the definition of “fishing.”¹ 16 U.S.C. §1802(16). The regulations implementing the Act include a voluntary program to confirm that proposed scientific research activities do not constitute fishing under the Act. 50 C.F.R. §600.512; §600.745

This voluntary “safe harbor” program is similar for foreign and U.S. flagged vessels: the person planning to conduct scientific research activities² in the U.S. EEZ submits a scientific research plan for each scientific cruise to the appropriate National Marine Fisheries Service regional office.³ The regional office acknowledges notification of the planned activities by issuing a Letter of Acknowledgment (LOA) to the sponsoring institution or the operator or master of the vessel. If, after review of the scientific research plan, the National Marine Fisheries Service determines that the proposed activities do not constitute scientific research, but rather fishing, the National Marine Fisheries Service will inform the applicant in writing as soon as possible. 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 LOA are presumed to be scientific research activities. 50 C.F.R. §600.512 (a) (foreign vessels); §600.745(a) (U.S. flagged vessels). That presumption can be overcome if: (1) the vessel is engaged in activity outside the scope of the scientific research plan; or (2) the activity does not fit the definition of scientific research activity. 50 C.F.R. §600.512 (a); §600.745(a).

The LOA is distinct from any permit or consultation required under any other applicable law. 50 C.F.R. §600.512 (a) and §600.745(a). Because the Act regulates fishing, compliance with the voluntary research reporting program is primarily relevant if the scientific research activity involves any activity that would otherwise be defined as fishing within the meaning of the Act but for the scientific research exemption or if the activity may appear to be fishing.⁴

¹ “Fishing, or to fish means any activity, other than scientific research conducted by a scientific research vessel, that involves: (1) The catching, taking, or harvesting of fish; (2) The attempted catching, taking, or harvesting of fish; (3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or (4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.” 50 C.F.R. §600.10.

² “Scientific research activity” is 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 effects of fishing, conservation engineering, and catch estimation of fish 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. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display are not scientific research activities. For foreign vessels, such data collection activities are considered scientific research if they are carried out in full cooperation with the United States. 50 C.F.R. §600.10.

³ The National Marine Fisheries Service Northwest Regional Office has posted information about the LOA process and recommended procedures at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/Letter-of-Authorization.cfm>.

⁴ An Exempted Fishing Permit (EFP) may be available to U.S.-flagged scientific research vessels conducting limited “testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, [where] the target or incidental harvest of species managed under an

If activities conducted by a vessel of the United States are determined not to be scientific research, the vessel may apply for an exempted fishing permit to conduct certain types of fishing or fisheries related activities. If activities conducted by a foreign vessel are determined to be fishing rather than scientific research, the vessel may not engage in fishing unless the vessel complies with the requirements for foreign fishing in Title II of the Act. Such fishing generally must be conducted pursuant to a governing international fishery agreement. 16 U.S.C. §1821; §1857(2)(B).

Vessels that engage in scientific research in the U.S. EEZ are requested to 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 National Marine Fisheries Service Science and Research Director. *See* 50 C.F.R. §600.512(b) (foreign vessels); §600.745(c) (U.S. flagged vessels).

FMP or fishery regulations [] would otherwise be prohibited.” 50 C.F.R. § 600.745(b). *See* NOAA, “Research Documentation Guidance,” November 23, 2010, page 2 *available at*: <http://www.nero.noaa.gov/permits/forms/EFPLOAEEAAPossessionLOAGuidance.pdf>.