



BILLING CODE: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF086

Atlantic Highly Migratory Species; Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit; availability of a draft environmental assessment; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Dr. David Kerstetter of Nova Southeastern University to evaluate pelagic longline (PLL) catch and bycatch rates from within two different sub-areas in the northern portion of the East Florida Coast Pelagic Longline (PLL) Closed Area (north and south of 29°50' N lat.) and compare those rates to rates obtained by authorized samplers from outside the EFC PLL Closed Area and the availability of a draft Environmental Assessment (EA) analyzing the impacts of granting the application to conduct the research using commercial PLL vessels, with certain terms and conditions. The overall purpose of the research project would be to evaluate PLL catches and catch rates of target and non-target species within a portion of the EFC PLL Closed Area to evaluate the effectiveness of existing area closures at meeting current conservation and management goals under current conditions using standardized PLL gear on a specified number of commercial vessels.

DATES: Written comments on the issuance of the EFP or on the draft EA will be considered by NMFS and must be received on or before [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Comments may be submitted by any of the following methods:

- Email: *nmfs.hms.plefp@noaa.gov*. Include in the subject line the following identifier: 0648-XF086.
- Mail: Margo Schulze-Haugen, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell at (301) 427-8503 or Rick Pearson at (727) 824-5399.

SUPPLEMENTARY INFORMATION: NMFS published a notice of intent to issue EFPs, Scientific Research Permits, Letters of Acknowledgement, and Chartering Permits for Atlantic highly migratory species (HMS) in 2017 (81 FR 80646, November 16, 2016). Although that notice anticipated a variety of applications, it also stated that occasionally, NMFS receives applications for research activities that were not anticipated, or for research that is outside the scope of general scientific sampling and tagging of Atlantic HMS, or rarely, for research that is particularly controversial and that NMFS will provide additional opportunity for public comment, consistent with the regulations at 50 CFR 600.745 if that were to occur.

As discussed in the November 2016 notice of intent to issue EFPs and related permits, issuance of EFPs and related permits are necessary because HMS regulations (*e.g.*, fishing seasons, prohibited species, authorized gear, closed areas, and minimum

sizes) may otherwise prohibit activities that could be undertaken for scientific data collection or other valuable purposes. Thus, pursuant to 50 CFR parts 600 and 635, a NMFS Regional Administrator or Director may issue permits to 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. These permits exempt permit holders from the specific portions of the regulations (e.g., fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) that may otherwise prohibit the collection of HMS for public education, public display, or scientific research. The terms and conditions of individual permits are unique. EFPs and related permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*).

NMFS closed the EFC area to PLL gear year-round in early 2001 (65 FR 47213, August 1, 2000). The closure was implemented to reduce bycatch and incidental catch of overfished and protected species by PLL fishermen who target HMS because there was a noticeable difference in the bycatch of some non-target species (mainly undersized swordfish) between the EFC area and open areas. At the time, Atlantic blue marlin, white marlin, sailfish, bluefin tuna, and swordfish were overfished, and bycatch reduction was a component of rebuilding efforts. In particular, the United States was implementing a 1999 swordfish rebuilding plan, and the closure helped reduce bycatch of undersized swordfish. Several other laws required that NMFS address bycatch in the HMS fisheries,

including the Endangered Species Act (ESA), which required reductions in sea turtle bycatch in the PLL fishery. National Standard 9 of the MSA also requires that fishery management plans minimize bycatch and bycatch mortality to the extent practicable.

The closure has been in place for more than 15 years and, since 2001, a number of changes in stock status and fishery management measures have occurred. Specifically, North Atlantic swordfish has been rebuilt since 2009, current international assessments of white marlin and Western Atlantic sailfish indicate that overfishing is likely not occurring, the PLL fishery has been required since 2004 to use circle hooks instead of J-hooks to reduce sea turtle bycatch, and individual bluefin tuna quota (IBQ) allocations were implemented in the PLL fishery through Amendment 7 to the 2006 Consolidated HMS Fishery Management Plan in 2014 (79 FR 71509, December 2, 2014). Allowing limited access to the EFC PLL Closed Area for research purposes via an EFP would provide important data from the closed area under these changed conditions. NMFS has not obtained scientific data related to catch and bycatch rates from this area since 2010, and that data suggested that more research was needed due to the small sample size and poor spatial distribution of PLL sets in the research conducted from 2008-2010. The data resulting from the research under this EFP would be used to assess current bycatch rates during typical commercial fishing operations and to evaluate the effectiveness of the closed area in continuing to reduce bycatch of non-target species (e.g., billfish, undersized swordfish, prohibited species, and protected species). It would also provide more current data about the socio-economic impact of reduced catches of target species (swordfish and tunas) as a result of the closure, assess changes in species availability and distribution over time, and contribute to future stock assessments or other fishery

management measures. Among the purposes of EFPs in the regulations are the “conduct of scientific research, the acquisition of information and data . . . , [and] the investigation of bycatch, economic discard and regulatory discard,” and such an EFP would be in furtherance of those purposes (§ 635.32(a)(1)).

NMFS received an application to conduct research within two portions of the EFC PLL Closed Area and one portion of the open area (for comparative purposes) and has made a preliminary determination that it warrants further consideration and an opportunity for public comment. The application is available for review on the HMS Management Division’s website at <http://www.nmfs.noaa.gov/sfa/hms/compliance/efp/index.html>. The research conducted within the EFC PLL Closed Area and in the open areas would be carried out by no more than six PLL vessels at any one time. An additional seven “backup” vessels could be used to conduct research as replacements if any mechanical or technical issues arise on the other six vessels. The proposed research project would be authorized for 12 months and, pending annual review of any changed environmental conditions or impacts and of catches and catch rates of all species, as well as individual vessel performance, may be re-authorized for two additional 12-month periods. A maximum of 1,080 sets per year (12 months) would be authorized to occur between the six vessels, and sets would be distributed evenly between two sub-areas of the EFC PLL Closed Area and one open area. Each set would consist of a maximum of 750 16/0 or larger circle hooks.

NMFS invites comment on certain terms and conditions that we believe would be appropriate for inclusion on this EFP, if issued. The commercial vessels that would be participating in this EFP project are otherwise authorized to fish and, absent this EFP,

would be conducting normal PLL fishing operations in open areas consistent with their past practices. NMFS conducted an analysis that compared projected catches if vessels were to continue fishing only in open areas (*i.e.*, all effort in open areas) versus projected catches from fishing operations under the EFP (*i.e.*, 2/3 effort in closed area and 1/3 effort in open area). The analysis indicated that fishing operations under the EFP could result in comparatively higher interactions with dusky, silky, and night sharks. Many of the proposed terms and conditions are structured to maximize the survival of these shark species and to increase the Agency's understanding of these data poor stocks. The proposed terms and conditions include:

- During the proposed research project, 33 percent of sets occurring in both portions of the EFC PLL Closed Area and in open areas would be observed by NMFS-trained NOVA Southeastern University students or NMFS-approved observers.
- NMFS would review 100 percent of electronic monitoring data for sets occurring in both portions of the EFC PLL Closed Area and in open areas.
- After three dusky sharks are discarded dead by a vessel participating in the EFP, that vessel would be required to reduce the soak time of the gear to no longer than 10 hours when conducting fishing operations under the EFP. If, after reducing the soak time to no longer than 10 hours, an additional three dusky sharks are discarded dead, then that vessel would no longer be authorized to fish in the EFC PLL Closed Area under this EFP, if issued, for the remainder of the 12-month project period, unless otherwise permitted by NMFS.

- All live sharks caught but not being retained must be safely sampled (e.g., fin clip) and photographed without removing the shark from the water. All fin clips and photographs would be sent to the Southeast Fisheries Science Center (SEFSC) for identification purposes.
- All sharks that are dead at haul back, including prohibited species, and all sharks being retained for sale must be biologically sampled (e.g., vertebra and reproductive organs removed) to facilitate species identification and collection of life history information. All biological samples would be sent to the SEFSC.
- Sets inside and outside of the closed areas would be equipped with hook timers, in accordance with protocols established by NMFS, to determine when animals were captured and when mortality occurs.

Availability of a Draft Environmental Assessment

NMFS is also announcing the availability of a draft EA that analyzes the potential impacts to the human environment of granting this EFP application for experimental PLL fishing within northern portions of the EFC PLL Closed Area and one area outside the Closed Area, as the request is described above. Among other analyzed impacts, the draft EA projects the annual catches of all HMS species, as well as some non-HMS species interactions, from the EFC PLL Closed Area and open areas that could be expected to occur if this EFP is approved. Additionally, the draft EA describes NMFS' rationale for the preferred alternative and other alternatives under consideration for this research. The draft EA may be found on the HMS Management Division's website at

<http://www.nmfs.noaa.gov/sfa/hms/compliance/efp/index.html>. Comments on the draft EA may be submitted via the methods outlined in the **ADDRESSES** section of this notice.

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

Dated: January 10, 2017

Emily H. Menashes,
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[FR Doc. 2017-00791 Filed: 1/13/2017 8:45 am; Publication Date: 1/17/2017]