



BILLING CODE: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE943

Atlantic Highly Migratory Species; Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: On November 16, 2016, NMFS published a Notice of Intent (NOI) announcing our intent to issue exempted fishing permits (EFPs), scientific research permits (SRPs), letters of acknowledgement (LOAs), and display permits for research regarding highly migratory species (HMS) in 2017. In the NOI, NMFS requested comments regarding the issuance of EFPs and LOAs for HMS research. In general, EFPs and related permits would authorize collection of a limited number of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection and public display. Comments were accepted on the NOI until December 16, 2016, and many of the comments received were related to white shark research and the need to provide additional opportunity for public review of such research before permits are issued. In this notice, NMFS summarizes public comments received on the initial NOI, and announces the receipt of applications for permits under the EFP program to conduct research on white sharks during 2017. NMFS invites additional public comment on these requests.

DATES: Written comments must be received on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

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

- Email: *nmfs.hms.efp2017@noaa.gov*. Include in the subject line the following identifier: 0648-XE943.
- Mail: Craig Cockrell, 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.

The comments received on the NOI that published in November 2016, the **Federal Register** notice, and the applications for EFPs received to date may be found on the HMS Management Division's website at:

<http://www.nmfs.noaa.gov/sfa/hms/compliance/efp/index.html>.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 2016 (81 FR 80646), NMFS published a Notice of Intent (NOI) announcing the intent to issue EFPs, scientific research permits (SRP), display permits, LOAs, and chartering permits for the collection and tagging of a limited number of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection and public display.

Regulations specify that "NMFS may authorize activities otherwise prohibited by the regulations contained in this part for the conduct of scientific research, the acquisition of information and data, the enhancement of safety at sea,

the purpose of collecting animals for public education or display, the investigation of bycatch, economic discard and regulatory discard, or for chartering arrangements.” 50 CFR 635.32 (a)(1). During the comment period for the November 2016 NOI, NMFS received numerous comments regarding previous years’ white shark research in Federal waters, focusing primarily on concerns about the need for coordination among researchers regarding the potential effects of one project on another. The volume of these comments indicated to us that any EFPs or SRP applications involving white sharks in 2017 should be considered “controversial” and would warrant an additional opportunity for public comment, which we would consider before issuing the permits.

Summary of Comments

In response to the NOI, NMFS received comments regarding white shark research in Federal waters and impacts to existing research being conducted in state or Federal waters. A number of the comments requested that NMFS consult with the public before issuing permits for white shark research for the purpose of expressing concerns related to the specifics of those EFP applications (*e.g.*, any potential interference with ongoing white shark research). Additionally, many of the comments specifically mentioned interactions between the Commonwealth of Massachusetts mark-recapture study on white sharks in their state waters and the research activities being conducted by the research group OCEARCH in adjacent Federal waters. NMFS also received a comment in support of issuing an EFP to a purse seine fishery participant and two comments in support of the continued issuance of display permits for Atlantic HMS.

In 2016, NMFS issued an SRP to OCEARCH to tag and collect tissue samples from a variety of sharks in Federal waters of the Gulf of Mexico and Atlantic Ocean, including white, tiger, great hammerhead, smooth hammerhead, bull, sand tiger, shortfin mako, longfin mako, oceanic whitetip, blue, silky, and Caribbean reef sharks. In mid-September, OCEARCH moved to Federal waters off the coast of Massachusetts and began their tagging and collection activities. NMFS was not aware of any potential conflict between OCEARCH's shark research in Federal waters and the Commonwealth of Massachusetts white shark research in state waters until after the 2016 SRP had been issued and the research was underway. Once it became clear that OCEARCH was intending to conduct research in Federal waters just outside of Massachusetts state waters, the state and other organizations expressed concern regarding the potential impact of OCEARCH's tagging activities on the state's mark-recapture study.

Current Applications for White Shark Research

In 2016, NMFS issued an SRP to OCEARCH because the group was deploying archival tags on Atlantic sharks, and the regulations in place at the time specifically required written authorization for such activities. Due to the final rule modifying archival tag permitting and reporting requirements (August 19, 2016, 81 FR 55376), OCEARCH no longer needs an SRP for its tagging activities, as archival tagging activities no longer require written authorization from NMFS. NMFS recently received an application for OCEARCH to conduct tagging and non-lethal biological sampling activities within Federal waters in 2017. Because the Magnuson-

Stevens Fishery Conservation and Management Act states that scientific research activity conducted on a scientific research vessel is not defined as “fishing” under the Act, NMFS does not otherwise require a permit for the research activities and would consider issuing a LOA to OCEARCH and its associated scientists after reviewing their research plan. An LOA only acknowledges the activity as scientific research, but NMFS has in the past requested that applicants comply with certain terms and conditions, usually in association with Endangered Species Act requirements. Since research is not considered fishing, there would be no regulatory exemptions or limitations on fishing gear or fishing areas (within Federal waters) as long as the activities being conducted are consistent with the research plan provided to NMFS.

In addition to the application from OCEARCH, NMFS has received one application from Dr. Gregory Skomal, Massachusetts Division of Marine Fisheries, to conduct research on white sharks from both research vessels and recreational vessels. Dr. Skomal and associated researchers would examine the fine- and broad-scale movements of several shark species by tagging them with an acoustic transmitter, M-tag, and/or a satellite tag. Non-lethal biological samples (*e.g.*, blood samples, fin clips) would also be collected from the tagged sharks. The research would be conducted in Federal waters from Florida to Maine. NMFS expects that this research would require an EFP if issued because part of this research would be conducted from private vessels, not bona-fide research vessels. NMFS invites comments on this specific application and the impacts it may pose to other research being conducted on white sharks in the Atlantic, including the Gulf of Mexico and Caribbean Sea.

NMFS notes that before issuing any EFP or SRP, NMFS does consider whether environmental impacts or socioeconomic impacts will occur beyond the existing analyses and whether additional consultation or analyses are needed over the impacts. Absent such impacts, we do not conduct detailed analyses about the impact of one research project on another. Coordination among researchers regarding research goals, methodologies, and research areas and practices is primarily the responsibility of the researchers themselves.

Comments must be submitted by [*insert date 30 days after date of publication in the FEDERAL REGISTER*]. For more information about the applications, see **For Further Information Contact**.

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

Dated: February 24, 2017.

Karen H. Abrams,
Acting Deputy Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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