



**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 availability of a final environmental assessment to issue an exempted fishing permit.

**SUMMARY:** NMFS announces the availability of a Final Environmental Assessment (EA) analyzing the impacts of issuing an exempted fishing permit (EFP) to 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 (EFC) Pelagic Longline (PLL) Closed Area (north and south of 29°50' N lat.) and compare those rates to rates obtained by authorized samplers from an area outside the EFC PLL Closed Area, with certain terms and conditions. The overall purpose of the research project is 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. In response to terms and conditions established by NMFS, the research project is also structured to maximize the survival of shark species, collect data on shark species identification, collect data on PLL soak times to reduce bycatch mortality of species such as dusky sharks, and to increase the Agency's understanding of data poor shark stocks to improve future

management of these species. NMFS considered public comments and decided to issue the EFP given the need to assess and compare current catch and bycatch rates during normal commercial fishing operations from areas inside and outside the EFC PLL Closed Area.

**DATES:** The Final EA will be available on [*insert date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** A copy of the Final EA may be requested by contacting Atlantic 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:**

**Background**

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 such 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) sometimes otherwise prohibit activities that could be undertaken for scientific data collection or other valuable purposes. Thus, under 50 CFR 635.32, and consistent with 50 CFR 600.745, the Director of the Office of Sustainable Fisheries may, through issuance of an EFP, authorize for certain purposes the target or incidental harvest of species managed under a Fishery Management Plan (FMP) or fishery regulations that would otherwise be prohibited. Among the purposes of EFPs are the “conduct of scientific research, the acquisition of information and data, . . . [and] the investigation of bycatch, economic discard and regulatory discard.” 50 CFR 635.32(a)(1). 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, West Atlantic bluefin tuna, North Atlantic albacore tuna, and swordfish were overfished with overfishing occurring, 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 now and, since 2001, a number of changes in stock status and fishery management measures have occurred. Specifically, North Atlantic swordfish and North Atlantic albacore tuna have been rebuilt, current international assessments of white marlin and West Atlantic sailfish indicate that overfishing is likely not occurring, and Western Atlantic bluefin tuna is not subject to overfishing. Additionally, 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 area 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 from within two different sub-areas in the northern portion of the EFC PLL Closed Area (north and south of 29°50' N lat.) and compare those rates to rates obtained from one portion of the open area (for comparative purposes) and published a notice of availability in the *Federal Register* for a Draft EA and a 30-day public comment period (82 FR 4856; January 17, 2017). On February 15, 2017 (82 FR 10746), NMFS extended the public comment period from February 16, 2017, until March 29, 2017. The EFP application is available for review on the HMS Management Division’s website at <http://www.nmfs.noaa.gov/sfa/hms/compliance/efp/index.html>.

### **Availability of a Final Environmental Assessment**

NMFS announces the availability of a Final EA that analyzes the potential impacts to the human environment of granting this EFP application for experimental PLL fishing within two sub-areas of the EFC PLL Closed Area and one area outside the

Closed Area. Among other analyzed impacts, the Final EA projects the annual catches of all HMS species, as well as some non-HMS species interactions, from within two sub-areas of the EFC PLL Closed Area and one open area that could be expected to occur. Additionally, the Final EA describes NMFS' rationale for the preferred alternative and other alternatives considered for this research and includes responses to public comments on the Draft EA. The Final EA may be found on the HMS Management Division's website at <http://www.nmfs.noaa.gov/sfa/hms/compliance/efp/index.html>.

### **Response to Comments**

During the public comment period NMFS received over 500 comments. The majority of the comments were submitted by recreational fishing constituents opposed to the research project. These commenters stated that the current EFC Closed Area has been effective at rebuilding several fish stocks and increasing recreational fishing opportunities and that it should remain closed to maintain those results and benefits. Several environmental organizations were opposed to the research project primarily because of concerns about what they considered to be excessive levels of bycatch (sharks, billfish, and undersized swordfish) at the level of effort proposed by the EFP applicant, although some groups recognized the need for the research. Comments from HMS commercial fishing industry participants and organizations recognized the need for the research, but expressed reservations that only one company (Day Boat Seafood LLC) would conduct and benefit from the project. As described below, NMFS has made changes to the preferred alternative described in the Final EA, based in part on public comments.

#### *A. Purpose & Need for Proposed Research Project*

*Comment 1:* There is no legitimate need for the proposed research project because the effect of pelagic longline (PLL) fishing within the closed area (a nursery for juvenile swordfish) is well-known. Conditions have not changed in the last 15 years.

*Response:* The EFC PLL Closed Area has been in place for more than 15 years. 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 West Atlantic sailfish indicate that overfishing is likely not occurring, West Atlantic bluefin tuna is not subject to overfishing, and North Atlantic albacore tuna has been rebuilt. Additionally, the PLL fishery has been required since 2004 to use circle hooks instead of J-hooks to reduce sea turtle bycatch, and IBQ allocations were implemented in the PLL fishery through Amendment 7 to the 2006 Consolidated HMS FMP in 2014 (79 FR 71509, December 2, 2014). Environmental conditions may have changed thereby affecting migratory patterns and species distributions of Atlantic HMS. Allowing limited access to the EFC PLL Closed Area for research purposes through an EFP would provide important data from the closed area under all of these changed conditions. Thus, the purpose of the research project is to evaluate PLL catches and catch rates of target and non-target species within two sub-areas in the northern portion of the EFC PLL Closed Area and an open 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. Vessels participating in this project would be required to submit electronic logbooks at the end of each set to NOVA Southeastern University; and these data would be available to NMFS upon request. During the project period, 40

percent of all sets would be observed by NMFS-approved observers or scientific research staff. Finally, NMFS would review 100 percent of electronic video monitoring data for all sets conducted under this EFP. The research is of limited scope and would be conducted in only a portion of the EFC PLL Closed Area and, therefore, is not expected to negate the known conservation benefits of the closed area. Among the purposes of EFPs in federal regulations are “the investigation of bycatch, economic discard and regulatory discard,” and this EFP would be in furtherance of those purposes (50 CFR 635.32(a)).

*Comment 2:* This scientific research project will help to revitalize the U.S. highly migratory species (HMS) PLL fishery. It holds significant promise in evaluating responsible and sustainable ways to catch a larger percentage of swordfish quota allocated to the United States by ICCAT. We support efforts to assess the efficacy of the current closed areas and integrate new technologies into fisheries and fisheries research. Since the closure was implemented, many technological advances have been made in gear modifications, vessel monitoring, and bycatch mitigation tools and techniques that largely mitigate the duration and/or size of the PLL closed areas. Over the 15 years that the closure has been in place, little research has been conducted to evaluate the effectiveness of the existing closure in meeting current conservation and management goals.

*Response:* In the short-term, this project is anticipated to provide economic benefit to the vessels participating in the research and could increase U.S. North Atlantic swordfish landings by approximately seven percent, thus more fully utilizing the U.S. North Atlantic swordfish quota. In the long-term, this project is anticipated to provide

scientific fisheries data to assess current bycatch rates during normal 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 will also provide current data about the socio-economic impact of reduced catches of target species (swordfish and tunas) as a result of the closure, electronic vessel monitoring, changes in species availability and distribution over time, and contribute to future stock assessments or other fishery management measures.

*B. Support for Alternative 1 (No Action)*

*Comment 3:* The recovery of a once-overfished species (swordfish) does not warrant returning to the kind of fishing that caused overfishing (excessive harvest of juveniles) and created the need for closures in the first place. If closing the EFC area to PLL gear resulted in a stock rebound, then that area is obviously vital to the overall Western Atlantic swordfish stock and should remain permanently closed to PLL vessels.

*Response:* Issuance of this EFP would not represent a return to the level of fishing that contributed to overfishing of swordfish (including excessive harvest of juveniles). Specifically, this project is limited to six PLL vessels and 720 sets (with 480 sets distributed between two sub-areas of the EFC PLL Closed Area and the remainder occurring in the open area). Additionally, a historical comparison of the PLL fishery prior to 2001 to current conditions indicates a very different situation. The overall number of vessels landing swordfish has declined from 168 in 2001 to 90 vessels in 2016/2017 (to date). There has also been a decline in the number of PLL hooks fished from 7.6 million to 5.8 million. Several other time/area closures and gear restricted areas (GRAs) have been implemented since 2001, including the Desoto Canyon, Charleston Bump, and

Northeastern closures, and the Cape Hatteras and Gulf of Mexico GRAs. Circle hooks now are required throughout the PLL fishery and weak hooks are required in the Gulf of Mexico. Electronic video monitoring systems (EM) are installed and must be utilized on all PLL vessels. Finally the individual bluefin quota (IBQ) program, which requires that sufficient IBQ be possessed prior to PLL fishing, may further limit effort in some circumstances. As described in Section 8.5 of the 2016 HMS SAFE Report, the result is that reported numbers of swordfish kept and discarded, large coastal sharks kept, and BAYS tunas kept from 2005 - 2015 decreased by more than the predicted values developed in Regulatory Amendment 1 to the 1999 FMP. Reported discards of pelagic sharks and all billfish also declined by more than the predicted values developed in Regulatory Amendment 1 to the 1999 FMP (swordfish kept: -41 percent; swordfish disc. -63 percent; LCS kept: -93 percent; BAYS kept: -36 percent; pelagic sharks disc. -32 percent; billfish disc. -53 percent).

*Comment 4:* NMFS should support conservation and sustainable fishing activities related to recreational fishing. Please do not reverse the progress that the EFC PLL Closed Area has made to recreational fisheries.

*Response:* Fishing activity conducted under this EFP is not anticipated to reduce recreational fishing opportunities for Atlantic HMS or to adversely affect the stocks that are recreationally fished. Recreational fishermen will still be able to go fishing off the eastern Florida coast, and the limited activities in this EFP are not expected to result in negative effects for recreationally-fished stocks. Successful recreational and commercial PLL fishing activities currently occur simultaneously in many areas of the Atlantic, Gulf of Mexico, and U.S. Caribbean.

### *C. Range of Alternatives in Draft Environmental Assessment*

*Comment 5:* The Draft EA has not evaluated or discussed a number of possible reasonable alternatives that would meet the purpose and the need of the research project and could have less adverse impact to the human environment. The duration of the research should be reduced and data combined with data from the research conducted in the closed area from 2008-2010. The research project should be limited to the minimal number of sets and hooks necessary for statistical validity.

*Response:* NMFS analyzed a reasonable range of alternatives that are feasible to accomplish the purpose and need of the project, which is to evaluate PLL catches and catch rates of target and non-target species within two sub-areas of the northern portion of the EFC PLL Closed Area and compare those to an open area. These included not issuing an EFP (no action) and a smaller and larger geographic area (Alternatives 2 and 3, respectively). NMFS also analyzed both the level of effort proposed by the applicant and a lesser amount of fishing effort commensurate with current fishing effort. In the Final EA and EFP, NMFS has reduced the number of sets authorized from the requested (and previously-preferred) level of 1,080 sets/year to 720 sets/year and the number of hooks per set from 750 hooks/set to 600 hooks/set. These numbers are commensurate with current levels of fishing effort by the participating vessels.

A reduction in the duration of the project would not provide adequate sampling over time to account for seasonal variations in environmental conditions that may occur and thus would not meet the purpose and need of the EFP. Analysis of research data collected from 2008-2010 was used to develop projections for this EFP; however, changes in conditions since 2008-2010 prevent the combination of data sets. Although

the previous research did obtain some significant results, the sample size was small and the spatial distribution of sets was poor. These results suggested that additional research was needed, and the current project size was designed to correct the errors in sample size and spatial distribution in the previous research.

#### *D. Utilization of U.S Swordfish Quota*

*Comment 6:* There is an implication that if the United States does not catch every swordfish allotted to it, then it will lose its quota to other nations. Although this argument has been around for years, the United States has not lost any swordfish quota.

*Response:* The United States has, to date, been successful in protecting its North Atlantic swordfish quota at ICCAT, despite significant underharvest of the quota in recent years. The United States has argued that restrictions on the U.S. fishery, such as the required use of circle hooks, contributed significantly to the stock's rebuilding and that in light of those sacrifices and the strict conservation measures that benefitted all countries fishing on the stock, the United States should be given some time to revitalize its fishery. The threat of losing quota to other countries without the same conservation measures remains real, and NMFS continues to work with stakeholders to find ways to revitalize the stock while effectively managing the stock and other affected species. NMFS also is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota. In 2016, preliminary data indicate that approximately 37 percent of the U.S. swordfish baseline quota and 33 percent of the adjusted quota was landed. Thus, the commenter's suggestion that our concern is catching "every fish" mischaracterizes and understates the quota issue. In the short-term, this research project provides an additional opportunity to

harvest the swordfish quota while providing economic benefit to the vessels participating in the research. It is projected to increase U.S. landings of swordfish by approximately seven percent, thus more fully utilizing the U.S. North Atlantic swordfish quota. This is not the primary reason for issuing the EFP, which will gather much-needed research from the EFC PLL Closed Area, but the project will help revitalize the North Atlantic swordfish fishery in the near-term.

*E. Project Design*

*Comment 7:* If this EFP is authorized, it would allow more than 1,000 longlines to be set per year, with over 750 hooks per longline. This means that over 2.25 million additional hooks will be floating off of Florida's coast.

*Response:* While the preferred alternative in the Draft EA would have authorized up to 1,080 sets per year with 750 hooks per longline, NMFS has modified the preferred alternative in the Final EA and EFP to limit the number of sets to be commensurate with current effort in the open area. NMFS would authorize 720 longline sets per year with up to 600 hooks per set under this EFP. Of those, 480 sets would be authorized to be deployed between two sub-areas in the EFC PLL Closed Area. Thus, 288,000 hooks would be authorized in the EFC PLL Closed Area. NMFS emphasizes that these hooks would not be “additional” hooks, as they would otherwise be deployed in areas currently open off Florida’s east coast. This EFP only authorizes an amount of fishing effort commensurate with current levels of effort by participating vessels.

*Comment 8:* An initial adjustment period should be provided for fishermen participating in the study area to allow them to learn how to fish the Gulf Stream waters and ‘normalize’ techniques and catches before data are collected or used for the purposes

of the study. This will allow data to be reflective of experienced fishing practices in the EFC PLL Closed Area, rather than being influenced by data collected while fishermen are learning how to fish in the area.

*Response:* The vessels and captains authorized to participate in this research project are experienced with fishing in areas immediately adjacent to the EFC PLL Closed Area. It would not be prudent to authorize fishing activities in the closed area without collecting the resultant data. NMFS believes that the participating captains will more quickly adjust their fishing practices while fishing under the provisions and terms and conditions of the EFP, rather being allowed to fish in the closed area without the EFP restrictions. In addition, pending annual review, if the EFP is authorized for an additional two years, variations between years could be recorded to see if changes in catch or bycatch rates occur due to improvements in fishing techniques.

*Comment 9:* Data collection during this study should be at as high a resolution as possible in order to determine fine-scale differences in catch and bycatch in time and space.

*Response:* Vessels participating in this project would be required to submit electronic logbooks, including date, time, location, and basic oceanographic conditions, at the end of each set to the research applicant at NOVA Southeastern University. These data would be available to NMFS upon request. The electronic logbook data would be audited every three months by the researcher who would compare randomly selected capture events in the electronic logbook to these events as recorded by electronic video data. NMFS will review one hundred percent of the electronic video data during the project. In addition, all existing reporting requirements would apply to participating

vessels including logbook reporting and observer coverage requirements, which include latitude and longitude fields.

*Comment 10:* We recommend a maximum mainline length of 5 miles, allowable soak times no longer than 3-4 hours, and retrieval of the gear in the order in which it was deployed. Reducing the amount of time that hooks are in the water could enhance the survival of fish and other animals caught incidentally or that must be released according to regulation.

*Response:* The purpose of this study is to collect commercial fishery data from PLL vessels using normal fishing methods to effectively assess the difference between the closed and open area effects during such operations. Reducing the mainline length and soak times would not be representative of how commercial PLL vessels normally fish their gear. However, research investigating shorter mainline lengths, soak times, and gear retrieval techniques would be valuable and NMFS will consider these recommendations for future research.

#### *F. Observer Coverage Rates and Vessel Monitoring*

*Comment 11:* Some commenters stated that, if the project were to take place, it should have an unbiased observer coverage rate of 100 percent of all sets and that the EA must be supplemented with a defensible observer coverage rate to support the proposed project. Conversely, other commenters stated that the level of monitoring is excessive, because observer coverage is expensive, and a 33 percent coverage rate, in addition to 100 percent electronic video monitoring, may unnecessarily increase project costs and create an expensive precedent for future similar research.

*Response:* We recognize that authorizing access to the EFC PLL Closed Area by commercial fishing vessels to conduct research warrants a high degree of oversight and monitoring. NMFS believes that an observer coverage rate of 40 percent is appropriate, given that additional funding has been obtained to ensure that 100 percent of electronic video monitoring data for all sets conducted under this EFP would be reviewed and the costs of 100 percent observer coverage would be prohibitive. Furthermore, 100 percent observer coverage is unnecessary given the other monitoring measures in place for this project. Forty percent observer coverage in addition to these other measures will ensure sufficient monitoring and accurate data collection and verification.

*Comment 12:* Some commenters stated that this project should evaluate expanding the use of EM to all catch and bycatch species. Optimizing the configuration of EM for all catch could improve the reliability of data collected, especially for bycatch species like sharks, and ultimately allow for additional accountability at a reduced cost. Conversely, other commenters stated that this project is not sufficient in scale or scope to support any future decision by NMFS to use EM to record and analyze all catch and bycatch for the purpose of managing the PLL fishery as a whole in open areas. Yet other commenters stated that the project will also evaluate electronic logbooks for more streamlined and real-time reporting that combines catch data with oceanographic information. These data could help better understand where and under what conditions bycatch species occur and how fishermen can best avoid them.

*Response:* EM equipment became required on all HMS PLL vessels on June 1, 2015. Thus, NMFS has approximately two years' worth of experience using the equipment and analyzing the data. In this project, NMFS will be reviewing one hundred

percent of electronic video (EM) data. Thus the project will provide additional experience and data that could help better evaluate the effectiveness and limitations of EM data in recording and identifying all species of catch and bycatch.

*G. Project Participation*

*Comment 13:* This EFP would give the applicant a distinct competitive market advantage with respect to some species, which other boats in the PLL fleet will not have during the project period.

*Response:* The research project is temporary and relatively short in duration (one year, with a possibility to renew annually twice pending annual review). The vessels fishing in this project would be fishing in the open areas absent this EFP, and there are costs associated with participation in this project. Some increased catch in target species is expected and will, in part, compensate the vessel owners for their participation in the project. Any financial advantages will be limited. The research applicant, not NMFS, selected and worked with the commercial fishing entity to develop this particular research project. Other entities may submit similar applications for EFPs at any time for consideration by NMFS. Such applications would be reviewed and evaluated for merit, based upon a sound scientific study design and other criteria.

*Comment 14:* This project should engage the participation of captains and crew with the greatest level of experience, including especially those that have prior experience fishing in this EFC area before it was closed. Failure to do this may generate catch and bycatch results that are not truly representative of the entire U.S. HMS PLL fleet. NMFS should allow other vessels or companies to apply and compete for the privilege to participate in the fishing activity specified in the EFP.

*Response:* The EFP application indicates that experienced PLL fishermen would participate in the project. These vessels and captains are currently fishing in areas immediately adjacent to the EFC PLL Closed Area. NMFS did not select the participating vessels. The EFP applicant and principal investigator selected the participants based upon their experience and the amount of fishing effort and methods needed to accomplish the objectives of the research.

#### *H. Catch and Bycatch Impacts*

*Comment 15:* Allowing PLL vessels in the EFC Closed Area will likely drive down stock abundance by killing dusky sharks, white sharks, undersized swordfish, marlin, sailfish, sea turtles, marine mammals, and many other species. PLL fishing is indiscriminate and was a major cause of the collapse of the swordfish fishery over 20 years ago.

*Response:* NMFS received many comments expressing concern about excessive levels of bycatch that could occur as a result of issuing the EFP. Given the size, scope, duration, and strict research protocols associated with the research project, NMFS does not anticipate that issuance of the EFP would result in any significant ecological economic impacts. The participating vessels are already fishing in areas that are currently open. The EFP would authorize the same amount of fishing effort compared to the baseline of normal operations that occur in open areas. There would be no overall increase in fishing effort as a result of the project, although fishing would occur in different areas and certain catches and interactions would be expected to increase. None of these increases are expected to adversely affect the stocks or to have significant environmental impacts. The management measures that have been implemented in the

PLL fishery since 2001, (including, but not limited to, circle hooks, gear restrictions, careful release equipment and training, individual bluefin tuna quotas, catch quotas, prohibited species, and electronic video monitoring) in combination with the strict research protocols associated with the research project are expected to mitigate any unforeseen ecological impacts such as unexpected bycatch levels. Discards of blue and white marlin are projected to remain largely unchanged. The amount of sailfish catch projected for this research project (226 individual sailfish) is not expected to lead to overfishing or have negative effects on the stock, as the overall TAC recommended by ICCAT (Rec. 16-11) for this stock is 1,030 mt. Similarly, the amount of swordfish projected to be caught is not expected to lead to overfishing as it would remain well within the 2017 adjusted U.S. North Atlantic swordfish quota which is expected to be 3,359.4 mt (equivalent to the 2016 adjusted quota). Although discards (dead and alive) of undersized swordfish are projected to increase, this would not be desirable for the vessel captain who would likely change fishing areas and modify fishing techniques to avoid such bycatch. NMFS intends to monitor this project carefully, and will consider the amount of undersized swordfish and other bycatch captured during annual review of the EFP. NMFS has added additional terms and conditions to the EFP, including individual vessel limits, to address dusky shark and other shark bycatch. While a commenter noted concerns about white shark interactions, no interactions with white sharks are expected. If white shark interactions do occur, they are not expected to have ecological impacts as recent research indicates white shark populations are apparently increasing in abundance since the 1990s when a variety of conservation measures were implemented. This also

would be considered during annual review of the EFP. Sea turtle bycatch is projected to be reduced and marine mammal bycatch is expected to remain unchanged.

*Comment 16:* Allowing research fishing in depths of 100 fathoms and less will likely lead to interactions with unwanted and undersized species.

*Response:* Historically, some fishermen working with the principal investigator have fished a portion of their longline gear in slower water on the west side of the Gulf Stream and a portion of their longline gear in the faster moving waters of the Gulf Stream. This allows their gear to “swing” with the current. The principal investigator has indicated that the slower water along the west side of the Gulf Stream is in proximity to the 100 fathom contour. A purpose of the project is to collect data about PLL catch and bycatch that will help address questions such as the one mentioned in this comment. The answer would not be known until fishery data are collected and analyzed through this research project.

#### *I. Support for Bycatch Limits*

*Comment 17:* The EFP must include bycatch limits, either individual vessels or fleetwide, for target and non-target finfish species including shark and billfish species. EFP investigators should be required to cease operations if and when any species-specific catch limit is reached.

*Response:* Bycatch limits are applied as a precautionary measure for certain shark species due to the current stock status of dusky sharks and problems of misidentification with silky and night sharks. Bycatch limits for other species are not necessary because of differences in stock status (*i.e.*, not overfished, no overfishing), low projected catches, or easier identification during monitoring. However, NMFS will closely monitor the catches

during the project duration and has the ability to modify the conditions of the EFP, and to end the research project, to address bycatch as warranted.

*Comment 18:* The EFP must include limits on interactions, takes and catches of species protected under the ESA and/or the MMPA.

*Response:* Sea turtle interactions are projected to decline and marine mammal interactions are projected to remain the same under this EFP, versus if all fishing effort were in the open area. All existing ESA and MMPA requirements otherwise applicable to PLL fishing are applicable to the fishing activities conducted under this EFP. The PLL fishery is governed by the ITS contained in the 2004 PLL BiOp. Sea turtle interactions (all species) have remained well below the incidental take statement (ITS) established in the 2004 PLL BiOp since its implementation. With regards to marine mammals, the PLL fishery must comply with the Atlantic Large Whale Take Reduction Plan and the Pelagic Longline Take Reduction Plan. These plans include broad-based gear modifications and time/area closures.

*Comment 19:* What bycatch numbers will be deemed acceptable? The levels of acceptable bycatch must be at or below those achieved by the closures.

*Response:* Any bycatch derived from within the EFC PLL Closed Area under this EFP would be above the level achieved by the closure because there is currently no PLL fishing activity in the area. NMFS has not determined the level of bycatch that would be considered acceptable, except for dusky sharks which are overfished and may be confused with other shark species. A general benchmark for fish species would be the likely projected annual catch levels analyzed in chapter four of the Final EA. However, these would also need to be assessed on an event by event basis. NMFS, in cooperation

with the principal investigator, would determine if the catch of a certain species was unusually large and/or unexpected. The use of electronic logbooks, 100 percent video monitoring, increased observer coverage (40 percent), and communication with the principal investigator would help enable this determination. Then, it would be necessary to assess whether the catch could lead to, or exacerbate, overfishing of the species. Extra precaution would be necessary for currently overfished species including blue and white marlin and certain shark species. Based upon this information, the principal investigator and NMFS would coordinate an appropriate response (*e.g.*, relocation, soak time reduction, temporary or permanent suspension of fishing activities). NMFS will closely monitor catches during the project duration and has the ability to modify the conditions of the EFP, and to end the research project, to address bycatch as warranted.

#### *J. Economic Impacts*

*Comment 20:* The issuance of an EFP would have an adverse indirect socio-ecological effect resulting from a reduction in catches of HMS and other species. This adverse indirect impact would affect recreational billfish anglers, recreational tournament operators, and all of those industries which are connected to the recreational fishery (marinas, tackle stores, boat manufacturers, etc.). The money spent on recreational fishing far outweighs any benefit commercial fishing may bring.

*Response:* Issuance of an EFP is not anticipated to cause or contribute to overfishing of HMS or other species as described in the ecological effects analysis in the Final EA. Recreational fishing for HMS is an important social and economic activity. Mandatory reporting of recreational swordfish and billfish landings became effective in 2001. However, a comparatively small amount of swordfish and billfish were reported as

landed from recreational anglers in the state of Florida in 2016. Data indicate that 290 swordfish, 102 sailfish, 2 blue marlin, and 1 white marlin were reported landed.

Reporting of releases is optional, but only 1 blue marlin was reportedly released in Florida in 2016. Collecting commercial fisheries data under this EFP is not anticipated to reduce the economic benefits of recreational fishing.

*Comment 21:* Data derived from the issuance of an EFP could benefit the U.S. PLL fleet. The PLL closures have had profound economic impacts on the fishery.

*Response:* This research project could benefit the management of all U.S. HMS fisheries by allowing for improved management decision making based upon current and accurate information.

*Comment 22:* The Draft EA does not provide adequate information and/or a determination whether a Finding of No Significant Impact (FONSI) can be made. The Draft EA determined that the proposed activity will have a potential adverse socioeconomic impact due to gear conflicts and a reduction in recreational catch. This adverse impact does not support a FONSI.

*Response:* A determination that there could be adverse indirect socio-economic impacts to the recreational fishing community does not, by itself, indicate that the overall impact of the research project is significant. NMFS anticipates that these impacts should be partially mitigated because the research area is located far offshore, and well north of where the vast majority of Florida anglers are concentrated. Also, the strict research protocols and limits associated with the research project should mitigate impacts on recreational anglers. Thus, the finding of no significant impact was warranted.

#### *K. Gear Conflicts with Other Fisheries*

*Comment 23:* There is an overlap of the areas in the EFP and areas utilized in the royal red shrimp, rock shrimp, golden crab, and golden tilefish fisheries. These fisheries employ trawl, trap, and bottom longline gear respectively that are not compatible with the presence of pelagic longlines. Similarly, PLL gear fished in the same area where recreational and commercial hook-and-line fishing activity is occurring for dolphin or wahoo could create user conflicts, both through potential interaction with the PLL gear as well as a real or perceived localized depletion of these and other pelagic species.

*Response:* This EFP would authorize a limited number of PLL sets by up to six vessels at one time in the project area. This level of fishing effort is not anticipated to result in a substantial number of interactions with fishing gears in other fisheries. These other fisheries also occur in other areas of the Atlantic and Gulf of Mexico where PLL fishing occurs, and these other fisheries occurred in the EFC area prior to its closure to PLL gear. In those areas and times, fishermen on the vessels have been able to communicate and work to minimize the potential for gear interactions. NMFS anticipates that this communication and coordination will continue to occur during the EFP project period.

*L. Impacts on ESA & MMPA Listed Species*

*Comment 24:* The Draft EA does not include a detailed assessment of the potential impacts of the proposed action on ESA-listed species or marine mammals. Interactions with marine mammals must be carefully considered by the agency to ensure that the project is consistent with the existing Take Reduction Plan for this fishery and the requirements of the MMPA to manage fisheries interactions with marine mammals.

*Response:* Interactions with listed species and marine mammals were considered by the agency to ensure that the research project is consistent with the existing Take Reduction Plan for this fishery and the requirements of the MMPA. As described in the response to Comment 18, all requirements otherwise applicable to PLL fishing are applicable to fishing activities conducted under this EFP. Although a limited amount of fishing effort under this EFP would occur in areas currently closed to PLL gear, the analysis in the EA shows that sea turtle interactions are projected to decline and marine mammal interactions are projected to remain the same under either Alternative 2 and Preferred Alternative 3 of this EFP, with effort relocated to the closed area versus if fishing effort were to occur solely in the open area. The level of fishing activity that would be authorized under this EFP in Preferred Alternative 3 does not represent any increase in fishing effort or methods other than those currently deployed in the U.S. PLL fishery, as analyzed in the 2004 PLL BiOp. Relocating part of the effort to the closed area does not alter that analysis. No additional take or quota use beyond that already authorized and analyzed in previous consultations on the PLL fishery is authorized by this permit. Similarly, the PLL fishery must comply with the Atlantic Large Whale Take Reduction Plan and the Pelagic Longline Take Reduction Plan. These plans include broad-based gear modifications and time/area closures. Additionally, the terms and conditions of the EFP require that any interactions with sea turtles or marine mammals must immediately be reported to the HMS Management Division, and the project terms and conditions may be altered or the project stopped if interactions are at problematic levels in relation to the established limits and protections.

*Comment 25:* The EFP should include a full discussion of consideration of reinitiating ESA Section 7 Consultation to consider the effect of the proposed EFP on the findings of the 2004 PLL Biological Opinion (BiOp).

*Response:* Fishing activity authorized under this EFP would be conducted using the same fishing methods and at the same level of fishing effort as currently exists outside of the project area. Furthermore, catches of sea turtles are projected to decrease as a result of this EFP. The 2004 PLL BiOp states that if the fishing type is similar, and the associated fishing effort does not represent a significant increase over the effort levels for the overall fishery considered in this BiOp, then issuance of some EFPs would be expected to fall within the level of effort and impacts considered in the BiOp. For example, issuance of an EFP to an active commercial vessel likely does not add additional effects than would otherwise accrue from the vessel's normal commercial activities. Thus, this research project is consistent with the findings of the 2004 BiOp.

#### *M. Cumulative Impacts Assessment*

*Comment 26:* NMFS has not demonstrated its methodology or Region of Influence (ROI) for conducting its cumulative impacts analysis for the proposed action. As the ROI for HMS includes the south Atlantic and the Gulf of Mexico (recent swordfish tag data from The Billfish Foundation shows juvenile swordfish migrating from the DeSoto Canyon to the Atlantic coast of south Florida), other actions in the ROI such as Department of Defense and offshore oil & gas operations should be addressed as part of the cumulative impacts analysis.

*Response:* Cumulative impacts are the impacts on the environment which result from the incremental impacts of the action when added to other past, present, and

reasonably foreseeable future actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7). The cumulative impacts assessment contained in the draft EA for this research project describes all past, present, and reasonably foreseeable future actions for all fish stocks interacting with PLL gear across the range of those stocks (or their region of influence) which, for many, includes the entire Atlantic Ocean and Gulf of Mexico. Although offshore oil and gas operations and Department of Defense activities may affect HMS, the incremental effect of authorizing a limited number of commercial PLL vessels that are currently fishing in open areas to fish and conduct research in two sub-areas of the EFC PLL Closed Area, when added to these other past, present, and reasonably foreseeable future actions, is not expected to produce adverse significant cumulative impacts.

#### *N. Impacts on Dolphin Fishery*

*Comment 27:* A reasonable trip limit of no more than 4,000 lbs of dolphin should be applied to the participating vessels while fishing in this area under the EFP. This will prevent the EFP fishery from using an excessive amount of the commercial dolphin quota before the rest of the PLL fleet has an opportunity when the Charleston Bump area opens on May 1st. Further, this will minimize conflicts with the interests of the recreational fishery. Finally, this is consistent with the trip limit currently applied to the commercial dolphin harvest when landings reach 75 percent of the commercial quota. NMFS should also implement a limit of 25,000 pound whole weight on the total amount of dolphin that can be landed with PLL gear from the EFC PLL Closed Area.

*Response:* Under 50 CFR Part 622.274, if pelagic longline gear is on board a vessel, a person aboard such vessel may not fish for or retain a dolphin or wahoo in the EFC PLL Closed Area. An exemption from this regulation has been submitted to the Southeast Regional Office (SERO) of NMFS under their EFP requirements to enable vessels to retain dolphin and wahoo during research operations, subject to otherwise applicable commercial fishing restrictions for the stocks. As recommended by the South Atlantic Fishery Management Council (SAFMC), a dolphin and wahoo exemption has been approved by the SERO Regional Administrator pending approval of this EFP by the HMS Management Division. Participating vessels would be limited to a 4,000 pound whole weight trip limit for dolphin when any portion of the trip occurs in the EFC PLL Closed Area. Additionally, participating vessels would be limited to the existing 500-pound trip limit for wahoo specified at 50 CFR 622.278(a)(1)(i). All other commercial dolphin and wahoo regulations, including the requirement to be issued a commercial dolphin-wahoo permit, would also apply. The environmental effects of this exemption have been analyzed in the Final EA. NMFS has determined that issuance of the EFP should not affect dolphin or wahoo in any way not already considered and analyzed under the Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic and it would not result in exceeding the annual catch limits for those species. Thus, the 25,000 pound whole weight total dolphin landing limit requested by the commenter is determined to not be necessary at this time.

*Comment 28:* If the Charleston Bump area continues to be closed from February 1st to April 30th, there should be no special access during that same time frame given to the area immediately south of the 31° N. Lat. line where all the HMS are migrating from unless the Charleston Bump was reopened at the same time.

*Response:* The purpose of this research project is to evaluate PLL catches and catch rates of target and non-target species within a portion of the EFC PLL Closed Area on a year-round basis to evaluate the effectiveness of existing area closures at meeting current conservation and management goals. Therefore, prohibiting research activities in the area for three months would prevent the collection of important seasonal catch rate information that could potentially be used to address this issue in the future.

*O. Essential Fish Habitat*

*Comment 29:* The Draft EA notes that essential fish habitat (EFH) for HMS (including species targeted by PLL gear) exists within the EFC PLL Closed Area, but no EFH Assessment has been completed for the proposed action. NMFS must conduct an EFH Assessment in order to determine if the proposed action would adversely affect EFH. Both alternatives would co-occur within the Stetson Miami Terrace coral habitat area of particular concern (CHAPC) and Preferred Alternative 3 would also overlap with the Oculina Bank CHAPC. If PLL gear fished in these areas unintentionally comes into contact with the bottom, the gear may damage this fragile coral habitat. The Oculina Bank and Stetson Miami Terrace are considered EFH-HAPC.

*Response:* An EFH assessment has been conducted for the proposed and final actions. As stated in the EFH assessment in the Draft and Final EA, issuance of the EFP is not anticipated to have an impact on EFH. The only gear to be deployed is PLL gear which has minimal or no impact on EFH for HMS or other species. PLL gear is typically fished in the water column where it does not come into contact with the benthic substrate. Thus, no impacts to benthic habitat or other EFH are anticipated.

*P. Suggestions for Additional Research*

*Comment 30:* NMFS should develop a hook and line survey to collect important population dynamics information from recreational and for-hire anglers.

*Response:* NMFS appreciates this comment; however it is outside the scope of alternatives addressed in the Draft EA. NMFS notes that the current Marine Recreational Information Program (MRIP) collects some of this information.

*Comment 31:* NMFS should conduct research into shorter sets and soak-times for longlines and how they might enhance survival of incidentally-caught fish and undersize target fish.

*Response:* NMFS appreciates this comment and agrees that research investigating shorter mainline lengths, soak times, and gear retrieval techniques would be valuable. In a document entitled “Atlantic HMS Management Based Research Needs and Priorities” (2014), examining the feasibility of gear alternatives in Gulf of Mexico and Atlantic Ocean to reduce bycatch while maintaining target catch was identified as a high priority.

### **Description of Preferred Alternative in Final Environmental Assessment**

The research conducted within the EFC PLL Closed Area and in the open area would be carried out by no more than six PLL vessels at any one time. An additional six “backup” vessels could be used to conduct research as replacements if any mechanical or technical issues arise on the other six vessels. The research project would be authorized for 12 months and, pending annual analysis review for 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 720 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 the open area. Each set would consist of a maximum of 600 16/0 or larger circle hooks. During the research project, 40 percent of sets occurring in both portions of the EFC PLL Closed Area and in the open area would be observed by scientific research staff or NMFS-approved observers.

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 the 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 areas and 1/3 effort in the open area). The analysis indicated that fishing operations under the EFP could result in comparatively higher interactions with dusky, silky, and night sharks, whether fishing occurred at the level requested by the applicant or at the reduced level commensurate with past fishing activity. Therefore, many of the terms and conditions in the EFP are structured to limit interactions with and maximize the survival of these shark species, collect data on shark species identification, collect data on PLL soak times to reduce bycatch mortality, such as dusky sharks, and to increase the Agency's understanding of these data poor stocks to improve future management of these species. The terms and conditions include:

- NMFS would review 100 percent of electronic monitoring data for 100 percent of sets occurring in both portions of the EFC PLL Closed Area and in the open area.
- After three dusky sharks are caught dead at haulback by a vessel participating in the EFP, that vessel or its replacement 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 caught dead at haulback, then that vessel or its replacement 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 haulback, including prohibited species, and all sharks being retained for sale must be biologically sampled (*i.e.*, vertebra and reproductive organs removed) to facilitate species identification and collection of life history information. All biological samples would be sent to an address specified by the SEFSC.
- Sets inside and outside of the two sub-areas of the EFC PLL Closed Area would be equipped with hook timers, in accordance with protocols established by NMFS, to determine when animals were captured and when mortality occurs. This will help determine appropriate PLL soak time to minimize dusky and other shark mortality.
- To assist in current research efforts on shortfin mako sharks, observers are requested to place a specified number of pop-up satellite archival tags (PSATS) on shortfin mako sharks that are released alive.

- NMFS will closely monitor the catches during the project duration and has the ability to modify the conditions of the EFP, and end the research project, to address bycatch as warranted.

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

Dated: August 4, 2017.

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