



**BILLING CODE: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XF750**

**Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, and Shark Research Fishery; Letters of Acknowledgment**

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

**ACTION:** Notice of intent; request for comments.

**SUMMARY:** NMFS announces its intent to issue exempted fishing permits (EFPs), scientific research permits (SRPs), display permits, letters of acknowledgment (LOAs), and shark research fishery permits for Atlantic highly migratory species (HMS) in 2018. EFPs and related permits would authorize collection of a limited number of tunas, swordfish, billfishes, and sharks (collectively known as HMS) from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection, bycatch research, public display, and to evaluate the efficacy of environmental clean-up efforts, among other things. Letters of acknowledgement acknowledge that scientific research activity aboard a scientific research vessel is being conducted. Generally, EFPs and related permits would be valid from the date of issuance through December 31, 2018, unless otherwise specified, subject to the terms and conditions of individual permits.

**DATES:** Written comments on these activities received in response to this notice will be considered by NMFS when issuing EFPs and related permits 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.efp2018@noaa.gov*. Include in the subject line the following identifier: 0648-XF750
- 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, phone: (301) 427-8503

**SUPPLEMENTARY INFORMATION:** 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 the collection of live animals and/or biological samples for data collection and public display purposes or may otherwise prohibit certain fishing activity. Pursuant to 50 CFR 600 and 635, a NMFS Regional Administrator or Director may 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. Permit holders are not exempted

from the regulations in entirety. Collection of HMS under EFPs, SRPs, LOAs, display, and shark research fishery permits represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the quota of the species harvested, as appropriate and applicable. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and/or species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

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.*). Regulations at 50 CFR 600.745 and 635.32 govern scientific research activity, exempted fishing, and exempted public display and educational activities with respect to Atlantic HMS. Before issuing LOAs, EFPs, or SRPs, NMFS requests, among other things, copies of scientific research plans. Because the Magnuson-Stevens Act states that scientific research activity which is conducted on a scientific research vessel is not fishing, NMFS issues LOAs and not EFPs for bona fide research activities (e.g., scientific research being conducted from a research vessel and not a commercial or recreational fishing vessel) involving species that are only regulated under the Magnuson-Stevens Act (e.g., most species of sharks) and not under ATCA. NMFS generally does not consider recreational or commercial vessels to be bona fide research vessels. However, if the vessels have been contracted only to conduct research and not participate in any commercial or recreational fishing activities during that research, NMFS may consider those vessels as bona fide research platforms while conducting the specified research.

For example, in the past, NMFS has determined that commercial pelagic longline vessels assisting with population surveys for sharks may be considered “bona fide research vessels” while engaged only in the specified research. NMFS acknowledges that the proposed activity meets the definition of scientific research under the Magnuson-Stevens Act and not ATCA by issuing an LOA to researchers. Examples of research conducted under LOAs include tagging and releasing of sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark species, and collecting and sampling sharks caught during trawl surveys for life history and bycatch studies.

While scientific research is exempt under MSA, scientific research is not exempt from regulation under ATCA. Therefore, NMFS issues SRPs that authorize researchers to collect HMS from bona fide research vessels for collection of species managed under this statute (e.g., tunas, swordfish, billfish, and some species of sharks). One example of research conducted under SRPs consists of scientific surveys of HMS conducted from NOAA research vessels.

EFPs are issued to researchers collecting ATCA and Magnuson-Stevens Act-managed species while conducting research from commercial or recreational fishing vessels. Examples of research conducted under EFPs include collection of young-of-the-year bluefin tuna for genetic research; conducting billfish larval tows from private vessels to determine billfish habitat use, life history, and population structure; determining catch rates and gear characteristics of the swordfish buoy gear fishery and the green-stick tuna fishery; and tagging sharks caught on commercial or recreational fishing gear to determine post-release mortality rates.

NMFS is also seeking public comment on its intent to issue display permits for the collection of sharks and other HMS for public display in 2017. Collection of sharks and other HMS sought for public display in aquaria often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species (e.g., sand tiger sharks), and collection of fish below the regulatory minimum size. Under Amendment 2 to the 2006 Consolidated Atlantic HMS Fishery Management Plan, NMFS determined that dusky sharks cannot be collected for public display.

The majority of EFPs and related permits described in this annual notice relate to scientific sampling and tagging of Atlantic HMS within existing quotas and the impacts of the activities have been previously analyzed in various environmental assessments and environmental impact statements for Atlantic HMS. NMFS intends to issue these permits without additional opportunity for public comment beyond what is provided in this notice. 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. Should NMFS receive such applications, NMFS will provide additional opportunity for public comment, consistent with the regulations at 50 CFR part 600.745.

During the comment period for the November 2016 notice of intent to issue EFPs (81 FR 80646), 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 that any EFPs or SRP applications involving white sharks in 2017 should be considered "controversial" and warranted additional

opportunity for public comment. Subsequently, NMFS published a notice in the Federal Register (March 1, 2017, 82 FR 12340) requesting public comment on applications for exempted fishing permits and related permits for white shark research, particularly on two applications involving white shark research that had been received at that time.

During the comment period, NMFS received 722 comments related to white shark research and the applications described in the notice. The majority of the comments were in support of continuing white shark research. Other comments that were received commented on a range of issues related to white shark research including concern regarding the proper handling of white sharks and the type of gear being used for research and concern regarding tagging operations on charter and private vessels due to long fight times on light tackle rods and reels. Some of the comments also stated that NMFS should approve EFP applications for white shark research on a case-by-case basis or that NMFS should stop issuing EFPs or related permits for research on sharks. After reviewing these comments, NMFS decided to issue EFPs and related permits for white shark research as appropriate in 2017. During 2018, NMFS anticipates permits for white shark research would be undertaken with substantially the same terms and conditions and scope as last year, with no additional anticipated effects. Comments are invited specifically on these issues related to issuance of white shark permits this year.

In addition, Amendment 2 to the 2006 Consolidated HMS Fishery Management Plan (FMP) implemented a shark research fishery. This research fishery is conducted under the auspices of the exempted fishing permit program. Shark research fishery permit holders assist NMFS in collecting valuable shark life history and other scientific data required in shark stock assessments. Since the shark research fishery was

established in 2008, the research fishery has allowed for: the collection of fishery dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help reduce fishery interactions through bycatch mitigation; the evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks; and the collection of hook-timer and pop-up satellite archival tag information to determine at-vessel and post-release mortality of dusky sharks. Fishermen who wish to participate must fill out an application for a shark research permit under the exempted fishing program. Shark research fishery participants are subject to 100-percent observer coverage. All non-prohibited shark species brought back to the vessel dead must be retained and will count against the appropriate quotas of the shark research fishery participant. During the 2017 shark research fishery, all participants were limited to a very small number of dusky shark mortalities on a regional basis. Once the number of mortalities occurs in a specific region all shark research fishery activities must stop within that region. Also, participants are limited to two sets per trip with, one set limited to 150 hooks and the second set limited to 300 hooks. All participants are also limited to a maximum of 500 hooks onboard the vessel with on a shark research fishery trip. A Federal Register notice describing the specific objectives for the shark research fishery in 2018 and requesting applications from interested and eligible shark fishermen is expected to publish in the near future. NMFS requests public comment regarding NMFS' intent to issue shark research fishery permits in 2018 during the comment period of this notice.

The authorized number of species for 2017, as well as the number of specimens collected in 2016, is summarized in Table 1. The number of specimens collected in 2017 will be available when all 2017 interim and annual reports are submitted to NMFS. In 2016, the number of specimens collected was less than the number of authorized specimens for all permit types, other than SRPs issued for shark research.

In all cases, mortality associated with an EFPs, SRPs, or display permits (except for larvae) is counted against the appropriate quota. NMFS issued a total of 39 EFPs, SRPs, display permits, and LOAs in 2016 for the collection of HMS and a total of 5 shark research fishery permits. As of October 3, 2017, NMFS has issued a total of 33 EFPs, SRPs, display permits, and LOAs and a total of 5 shark research fishery permits.

**Table 1. Summary of HMS Exempted Fishing Permits Issued in 2016 and 2017, other than shark research fishery permits. (“HMS” refers to multiple species being collected under a given permit type.)**

Permit Type	2016					2017	
	Permits Issued**	Authorized Fish (Num)	Authorized Larvae (Num)	Fish Kept/Discarded Dead (Num)	Larvae Kept (Num)	Permits Issued**	Authorized Fish (Num)**
EFP							
HMS	4	247	0	17	0	4	357
Shark	12	721	0	85	0	4	57
Tuna	4	530	0	0	0	2	350
SRP							
HMS	1	42	0	0	0	3	260
Shark	5	1,165	0	310	0	1	720
Tuna	1	60	0	0	0	0	0
Display							
HMS	0	0	0	0	0	2	88
Shark	3	109	0	26	0	5	109
Total	30	2,874	0		0	21	1,941
LOA*							
Shark	9	2,906	0	618	0	12	2,275

\*LOAs are issued for bona fide scientific research activities involving non-ATCA managed species (e.g., most species of sharks). Collections made under an LOA are not authorized; rather this estimated harvest for research is acknowledged by NMFS. Permittees are encouraged to report all fishing activities in a timely manner.

\*\*Atlantic HMS larvae were authorized for collection but no limit on the number of larvae were set.

Final decisions on the issuance of any EFPs, SRPs, display permits, and shark research fishery permits will depend on the submission of all required information about

the proposed activities, NMFS' review of public comments received on this notice, an applicant's reporting history on past permits, if vessels or applicants were issued any prior violations of marine resource laws administered by NOAA, consistency with relevant NEPA documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs as assessed in the 1999 FMP, the 2006 Consolidated HMS FMP and its amendments, the Environmental Assessment for the 2012 Swordfish Specifications, and the Environmental Assessment for the 2015 Final Bluefin Tuna Quota and Atlantic Tuna Fisheries Management Measures.

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

Dated: October 23, 2017.

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