

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6625
Washington, DC 20230

02/22/2006

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 01/09/2006.

TITLE: Highly Migratory Species Scientific Research
Permits, Exempted Fishing Permits, and Letters of
Authorization

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE
OMB NO.: 0648-0471
EXPIRATION DATE: 02/28/2009

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	1,040	141	6
New	238	169	0
Difference	-802	28	-6
Program Change		0	0
Adjustment		28	-6

TERMS OF CLEARANCE: None

OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

<p>1. Agency/Subagency originating request</p>	<p>2. OMB control number b. <input type="checkbox"/> None a. _____ - _____</p>
<p>3. Type of information collection (<i>check one</i>)</p> <p>a. <input type="checkbox"/> New Collection</p> <p>b. <input type="checkbox"/> Revision of a currently approved collection</p> <p>c. <input type="checkbox"/> Extension of a currently approved collection</p> <p>d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired</p> <p>e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired</p> <p>f. <input type="checkbox"/> Existing collection in use without an OMB control number</p> <p>For b-f, note Item A2 of Supporting Statement instructions</p>	<p>4. Type of review requested (<i>check one</i>)</p> <p>a. <input type="checkbox"/> Regular submission</p> <p>b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____</p> <p>c. <input type="checkbox"/> Delegated</p>
	<p>5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>6. Requested expiration date</p> <p>a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____</p>
<p>7. Title</p>	
<p>8. Agency form number(s) (<i>if applicable</i>)</p>	
<p>9. Keywords</p>	
<p>10. Abstract</p>	
<p>11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>)</p> <p>a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms</p> <p>b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government</p> <p>c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government</p>	<p>12. Obligation to respond (<i>check one</i>)</p> <p>a. <input type="checkbox"/> Voluntary</p> <p>b. <input type="checkbox"/> Required to obtain or retain benefits</p> <p>c. <input type="checkbox"/> Mandatory</p>
<p>13. Annual recordkeeping and reporting burden</p> <p>a. Number of respondents _____</p> <p>b. Total annual responses _____</p> <p> 1. Percentage of these responses collected electronically _____ %</p> <p>c. Total annual hours requested _____</p> <p>d. Current OMB inventory _____</p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p> 1. Program change _____</p> <p> 2. Adjustment _____</p>	<p>14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>)</p> <p>a. Total annualized capital/startup costs _____</p> <p>b. Total annual costs (O&M) _____</p> <p>c. Total annualized cost requested _____</p> <p>d. Current OMB inventory _____</p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p> 1. Program change _____</p> <p> 2. Adjustment _____</p>
<p>15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>)</p> <p>a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management</p> <p>b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research</p> <p>c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance</p> <p>d. <input type="checkbox"/> Audit</p>	<p>16. Frequency of recordkeeping or reporting (<i>check all that apply</i>)</p> <p>a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure</p> <p>c. <input type="checkbox"/> Reporting</p> <p> 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly</p> <p> 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually</p> <p> 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____</p>
<p>17. Statistical methods</p> <p>Does this information collection employ statistical methods</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>18. Agency Contact (person who can best answer questions regarding the content of this submission)</p> <p>Name: _____</p> <p>Phone: _____</p>

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

SUPPORTING STATEMENT
HIGHLY MIGRATORY SPECIES SCIENTIFIC RESEARCH PERMITS, EXEMPTED
FISHING PERMITS, AND LETTERS OF AUTHORIZATION
OMB CONTROL NO.: 0648-0471

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

This submission requests approval to update forms for information collection for the Highly Migratory Species (sharks, tunas, swordfish and billfish) Exempted Fishing Permits (EFPs), including Scientific Research Permits (SRPs), and Letters of Acknowledgement (LOAs). The success of fisheries management programs depends significantly on ensuring that allowable harvests are not exceeded. The requirements in this collection derive their authority from two separate acts, and the differences in those acts are responsible for the variations in the requirements applying to different species.

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) (Magnuson-Stevens Act) governs domestic fisheries and is the sole authority for management of fishing activities for Atlantic sharks (for which there is no international management). The Atlantic Tunas Convention Act (ATCA) regulates U.S. fishing activities of tunas, swordfish and billfish. Under the Magnuson-Stevens Act, the National Marine Fisheries Service (NMFS) may authorize fishing activities outside the established regulations. NMFS needs the ability to monitor exempted fishing activities to ensure compliance with authorized harvest levels in a timely and accurate manner, as this is crucial to enforcement. ATCA at 16 U.S.C. 971 requires the Secretary of Commerce (Secretary) to promulgate regulations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue these regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA. Section 971 d.(c)(3) of ATCA provides the statutory authority to require the collection of information necessary to implement the recommendations of ICCAT. An additional purpose of this collection of information is to comply with the U.S. obligations under the ATCA. Copies of these laws are attached.

Under both the Magnuson-Stevens Act and ATCA, non-scientific activities, including collection for education or display, may be authorized under EFPs. EFPs are necessary to allow research conducted from a commercial or recreational fishing vessel that would otherwise be prohibited by existing regulations. A display permit is issued for the collection of Highly Migratory Species (HMS) for the purpose of public display.

Technically, scientific research is exempted from regulation under the Magnuson-Stevens Act, so NMFS does not issue EFPs for bona fide research activities (i.e., research conducted from a research vessel and not a commercial or recreational fishing vessel) involving species regulated under Magnuson-Stevens Act FMPs. To avoid enforcement issues, however, NMFS does request copies of scientific research plans. In such cases, NMFS issues a LOA to researchers to indicate concurrence by NMFS that the proposed activity meets the definition of research and is therefore exempt from regulation.

ATCA, on the other hand, confers regulatory authority over scientific research so that all sources of mortality for species regulated by ICCAT can be reported by the Secretary. In cases where tunas, swordfish, and billfishes are being collected, NMFS will issue an EFP if the research/collection occurs in conjunction with regulated commercial or recreational fishing activity or a SRP if the collection of regulated species occurs as part of a research cruise (e.g., NMFS or university research vessel).

Finally, a 2002 recommendation of the ICCAT (Recommendation 02-21) states that at the time of a chartering arrangement, the chartering and flag Contracting Parties shall provide specific information concerning the charter to the ICCAT Executive Secretary, including vessel details, target species, duration, and consent of the flag Contracting Party or Cooperating non-Contracting Party, Entity or Fishing Entity. In order to comply with this recommendation, NMFS requires that vessel owners apply for and obtain a NMFS chartering permit before fishing under a chartering arrangement with a foreign entity. A chartering permit would exempt the vessel from domestic regulations as needed. The chartering permit application is covered under OMB Control No.: 0648-0495.

To regulate these fishing activities, NMFS needs information to determine the justification of granting an EFP, display, LOA, or SRP. The application requirements for an EFP, display, LOA, or SRP are detailed at 50 CFR 600.745(b)(2). Although the HMS program authority for requiring this information is found at 50 CFR 635.32(c), and NMFS is requesting clearance for the requirements as defined in those regulations, for consistency the application requirements are the same as for non-HMS permits covered by 600.745(b). Copies of these regulations are attached.

Since each exempted activity would address unique questions, the details of reporting requirements cannot be completely identified in advance. The specific requirements of this collection generally would include the following prior to the activity beginning:

- Purpose for the exempted fishing permit,
- Advance notification of the fishing or research vessel to be used,
- A list of authorized samplers,
- The number and size classes of fish to be caught or retained,
- Anticipated interactions with endangered or protected species,
- The anticipated locations to be fished,
- Commencement dates and duration of the activities,
- The fishing methods to be employed, and
- Notification of departure to collect animals for public display.

Post-activity reports would include:

- Catch/collection (interim) reports and “no-catch” reporting,
- Tagging animals collected for public display, and
- Year-end (annual) reports of results.

These specific reporting requirements will be identified in each EFP and failure to comply would result in a revocation of the authorization and/or issuance of a notice of violation. NMFS needs to know the amount and species of fish caught, where they are caught, and the catch disposition in order to effectively manage a fishery, and the other information is needed for enforcement purposes.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

For SRPs and/or LOAs, NMFS Regions, Fishery Science Centers, and NMFS and Coast Guard enforcement use information obtained from voluntarily submitted research plans and subsequent reports in monitoring such activities to ensure they are bona fide scientific research activities. NMFS reviews each scientific research plan submitted to establish that the sponsoring organization and personnel involved are recognized scientific investigators, that the specific project contemplated appears to be scientific research and not commercial or recreational fishing, and that the vessel or vessels to be used are, or will be, used exclusively for research for the duration of the scientific research cruise. NMFS uses any reports or articles voluntarily submitted to document catch taken in scientific research for inclusion in the total catch, confirm the activities conducted were scientific research, and consider the appropriateness of acknowledging future requests.

For exempted fishing activities, NMFS Regions, Fishery Science Centers, and NMFS and Coast Guard enforcement use EFP requests and their reports to evaluate proposals for issuance of permits, ensure activities are carried out as described in the permit, and document the catch by exempted fishing for inclusion in the total catch. NMFS evaluates EFP requests to determine their usefulness to the overall goals of the HMS fishery management plans; determines their impact on the fishery stocks, endangered species, and marine mammals; and evaluates them comparatively with other applicants for the same fishery. Management and enforcement use the information to identify the entities and vessels involved and ensure the applicant carries out activities within the restraints of the permit. Management and enforcement use the reports to document catch for inclusion in the total catch, confirm the activities conducted were in accordance with the permit, and consider the permittee for future permits.

For exempting educational activities, NMFS evaluates the authorization request for these activities to determine whether they are complete, confirms their educational value, and determines their consistency with the goals, objectives, and requirements of the HMS fishery management plans. Management and enforcement use the information to identify the entities and vessels involved and ensure the applicant carries out activities within the restraints of the permit. Management and enforcement use reports to document catch taken for inclusion in the total catch, to confirm the activities conducted were in accordance with the permit, and for consideration of future requests.

Requiring EFP recipients to report their harvest per occurrence in both federal and state waters as well as “no-catch” reporting allows management to document catch taken for inclusion in the total catch. In addition, tagging animals collected for public display, and notifying enforcement when departing for fishing trips for collection of animals for public display provides law enforcement personnel with a means to monitor fishing activities and to ascertain whether the vessel’s observed activities are in accordance with those authorized for that vessel. Annual reports provide a validation check against the data submitted in interim reports as well as a way for NMFS to determine if all individual reports have been submitted. Additionally, as many EFPs are issued for the purposes of research and/or public display, the scientific community, as

well as the general public, will benefit as unauthorized and illegal fishing are deterred and more burdensome regulations are avoided. The information collected pursuant to scientific collection activities under EFPs may be incorporated in future stock assessments. Inadequate harvest controls under these EFPs could result in curtailment of collection activity and the loss of public benefits.

As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NOAA Fisheries Service decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

This collection of information does not have to involve the use of automated, electronic, mechanical, or other technological techniques; however interim and annual reporting forms can be sent electronically to permittees and permittees may also return forms electronically. The applications and interim and annual reports may be mailed, faxed or e-mailed in to the HMS Division, as applicable, and the fishing notifications must be called in to enforcement.

NMFS requires the implantation of a dart tag or a microchip Passive Integrated Transponder (PIT) tags in animals brought back to shore for public display. This will impose no burden on the public since NMFS will supply the tags to collectors and supply the tag readers to enforcement.

4. Describe efforts to identify duplication.

Scientific Research Plans: To the extent that scientific research organizations are required to submit scientific research plans to NOAA, NMFS, or other agencies as a part of any contract or grant, those same plans would be acceptable for the purposes of this information collection. Copies of any scientific cruise report or research documentation required to be submitted by a scientific research organization would be acceptable as a voluntary report for the purposes of this collection.

Exempted fishing: There is no duplication with other collections. These EFPs are issued relative to specific requirements submitted to NMFS.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Nearly all commercial fishing and collection vessels in the HMS fisheries are categorized as small businesses. The collection will not have a significant impact on small businesses, and no

special modifications of the requirements were considered necessary to accommodate the needs of small businesses.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Scientific research plans: Violations of the Magnuson-Stevens Act where the violator asserts he/she was conducting scientific research and not commercially or recreationally fishing will be difficult to prove if a scientific research plan is not obtained, and a SRPs or a LOAs is not issued. Without an SRP or LOA, legitimate researchers will be inconvenienced and enforcement units will conduct needless and inappropriate boardings of scientific research vessels whose activities are confused with commercial and/or recreational fishing. In addition, if the catches of some scientific activities are large and not documented, then such activities cannot be managed properly and may contribute to overfishing.

Exempted fishing: Issuance of EFPs allows NMFS access to relevant information that can be used in the management of fisheries. If the information requested by exempted fishing and exempted educational activity permits is not obtained, there will be no standard way of dealing with these activities from region to region, and there could be more incidents of persons who think they are conducting scientific research being found in violation of the Magnuson-Stevens Act. In addition, requiring EFP applicants to report landings or collections and to provide an annual summary of these activities will increase the efficacy of management measures and reduce costs for both the U.S. Coast Guard and NMFS Office of Law Enforcement. Less frequent reporting would not support this goal. In addition, PIT and dart tags allow NMFS to avoid significant problems with accurate and timely enforcement of fisheries management measures.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

Interim reports (required within five days of a fishing trip) and “no catch” reports (required each month no fishing is conducted) are necessary for the management of different fisheries through quota monitoring. Annual reports provide a validation check against the data submitted in interim reports as well as a way for NMFS to determine if all individual interim reports have been submitted. Thus, these reports are necessary for management as well as enforcement.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice requesting comments on this submission was published on August 31, 2005 (70 FR 51754). Public comment on the application and reporting requirements was solicited in a Federal Register Notice (copy attached). No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

NMFS does not make payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Public release of any data collected by NMFS is controlled by NOAA confidentiality of statistics procedures at 50 CFR part 600, subpart E. Applicants for experimental fishing permits and exempted educational activities may be required to waive confidentiality of information as a condition of a permit.

It is Agency policy not to release confidential data, other than in aggregate form, as the Magnuson-Stevens Act (Section 402) protects the confidentiality of those submitting data (see NOAA Administrative Order 216-100, Confidentiality of Fishery Statistics). Whenever data are requested, the Agency ensures that information identifying the pecuniary business activity of a particular vessel operator is not identified.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No information of a sensitive nature is requested.

12. Provide an estimate in hours of the burden of the collection of information.

An application for an EFP must contain all the information required for an EFP application found at 50 CFR part 600.745(b)(2). An application for a SRP and a LOA must include a research plan and/or all the information required for an EFP application. Based on recent information on the number of EFP, SRP, display, and LOA applications, NMFS estimates: 2 hours for a scientific research plan; 40 minutes for an application for an EFP, display, SRP, or LOA for Highly Migratory Species; 1 hour for an interim report; 40 minutes for an annual fishing report; 15 minutes for an application for an amendment to an EFP; 5 minutes for notification of departure phone calls to NMFS Enforcement; 2 minutes for “no-catch” reports; and 2 minutes for tag applications. Based on EFP, SRP, LOA, display, and chartering permit activity for the calendar year 2004, NMFS estimates the following annual burden:

4 scientific research plans @ 2 hours = 8 hours

45 EFP, SRP, LOA, and display permit applications @ 40 minutes = 30 hours

14 amendments to exempted fishing permits @ 15 minutes = 3.5 hours

95 interim reports @ 1 hour = 95 hours

19 “no catch” reports @ 2 minutes = 38 minutes

45 annual reports @ 40 minutes = 30 hours

10 departure notifications to enforcement for collection of display animals @ 5 minutes = 50 minutes

15 tag applications @ 2 minutes = 30 minutes

Total annual burden for applying, notifying, tagging and reporting for HMS exempted fishing permits: 168.5 hours

The average response time per respondent: 168.5

burden hours/45 respondents = 3.7 hours

The average number of responses per respondent: 238

responses/45 respondents = 5.3 responses

Total Burden

These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. This includes reports on individual fish as well as a year-end report and is considered a maximum estimate for the burden of this collection of information.

Total respondents: 45 (45 applications)

Total responses: 238 (4 research plans + 45 applications + 14 amendments + 95 interim reports + 45 annual reports + 10 “no-catch” reports + 10 departures notifications + 15 tag applications)

Total burden hours: 168.5

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

The cost to applicants is minimal, with only a letter, landing report forms, or local telephone call needed to apply, notify or report. NMFS estimates that the total annual cost burden at \$68.45 with the average cost per EFP, SRP, LOA, display or chartering permit applicant at \$1.52:

Total EFP/SRP/LOA/display applications and EFP/SRP/LOA/display and chartering permit reports = 185 x \$0.37 postage per application, interim, and annual report.

Notification phone calls would be to local NMFS law enforcement officers/agents and therefore would not involve long distance charges; amendments to exempted fishing permits and “no catch” reports are typically sent via e-mail so they would not incur mailing costs; tag applications are sent in with exempted fish permit applications.

14. Provide estimates of annualized cost to the Federal government.

Costs for printing and supplying EFP collection information cards are expected to be minimal. The information cards have been produced with a word processor and can be faxed or mailed to EFP recipients. No new overhead costs will be incurred for these collections because NMFS will be using existing staff and equipment to conduct duplication, distribution, collection, and data entry. Costs of dart and PIT tags (microchips) for use by applicants will be incurred by NMFS; however as inspection operations will be conducted by existing staff, no new personnel costs will be incurred. NMFS has already purchased PIT tag readers (10 @ \$475 each for a total of \$4,750) and has already purchased a supply of dart tags that will last the duration of three years. The annual cost for PIT tags is estimated to be \$600 (100 tags @ \$6 per tag). Therefore, for the annual total cost to the Government is expected to be \$600.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

The changes from the previous submission are as follows: the HMS Management Division will no longer be issuing swordfish offloading EFPs. There have been no requests for these types of EFPs over the past few years nor has the swordfish quota been reached to warrant the fisheries' closure. Should the need arise for swordfish offloading EFPs, NMFS would submit a revised information collection request. Therefore, the annual cost burden has gone down \$262.70 to \$68.45 (a difference of \$194.25).

In addition, due to recent experience with HMS application and reporting requirements, the burden hours associated with these activities has changed (i.e., the burden hours have gone up 28 hours from 141 to 169). This increase is mainly due to an increase in the time associated with interim reports, which generally take less than 30 minutes, but overall average one hour. In the previous submission, these reports were estimated to take 5 minutes only. Almost all of the current respondents complete these reports, and thus the burden increase from this time adjustment adds 87 hours. The decreased number of other types of responses due to not including the swordfish requirements saves 59 hours, with a net increase of 28 hours.

16. For collections whose results will be published, outline the plans for tabulation and publication.

No publication is planned.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

The expiration date will be displayed.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

No exceptions are requested.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

ATTACHMENTS:

HMS Exempted Fishing Permit Application

HMS Interim Reporting Form

HMS Annual Reporting Form

Final Rule for Exempted Fishing Activities published on November 10, 2003 (68 FR 63738 - 63742).

Excerpts from:

50 CFR 600.745

50 CFR 632.32

Magnuson-Stevens Fishery Conservation and Management Act at 16 U.S.C. 1853

Atlantic Tunas Convention Act at 16 U.S.C. Section 971 d.

The Federal Register Notice requesting comments on this submission, published on August 31, 2005 (70 FR 51754).

FEDERAL HMS EXEMPTED FISHING PERMIT REQUIREMENTS AND APPLICATION

Regulations governing the issuance of Federal Exempted Fishing Permits (EFPs) for highly migratory species (HMS) are contained in 50 CFR Part 635.32 and 50 CFR Part 600.745. In general, HMS EFPs are issued by the National Marine Fisheries Service (NMFS) to authorize activities otherwise prohibited by the Atlantic HMS regulations; to facilitate the conduct of scientific research; for the purpose of limited testing of fishing gear and methods; for the acquisition of data for species that would otherwise be prohibited for harvesting, for the enhancement of safety at sea; for the purpose of collecting animals for public education or display; or for investigating means of reducing bycatch, economic discards or regulatory discards. HMS has the authority to issue four different types of EFPs; these are described below:

Exempted Fishing Permits (EFPs): Under both the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA), non-scientific activities may be authorized under EFPs. EFPs are necessary to allow research conducted from a commercial or recreational fishing vessel that would otherwise be prohibited by existing regulations.

Display Permit: Display permits are issued for the collection of HMS for the purpose of public display. Generally, display permits are issued to commercial or recreational fishing vessels, capable of keeping fish alive from the time of capture to the point of transfer to an approved aquarium or other facility.

Letter of Acknowledgements (LOAs): Technically, scientific research is exempted from regulation under the Magnuson-Stevens Act, so NMFS does not issue EFPs for bona fide research activities (*i.e.*, research conducted from a research vessel and not a commercial or recreational fishing vessel) involving species regulated or prohibited under Magnuson-Stevens Act Fishery Management Plans (FMPs). In such cases, NMFS issues an LOA to researchers to indicate concurrence by NMFS that the proposed activity meets the definition of research and is therefore exempt from regulation.

Scientific Research Permits (SRPs): ATCA confers regulatory authority over scientific research so that all sources of mortality of species regulated by the International Commission for the Conservation of Atlantic Tunas (ICCAT) can be reported by the Secretary. In cases where tunas, swordfish, and billfishes are being collected, NMFS will issue an EFP if the research/collection occurs in conjunction with regulated commercial or recreational fishing activity, or an SRP if the collection of regulated species occurs as part of a research cruise (*e.g.*, NMFS or university research vessel).

Chartering Permit: A 2002 ICCAT recommendation (02-21) states that at the time of a chartering arrangement, the chartering and flag Contracting Parties shall provide specific information concerning the charter to the ICCAT Executive Secretary, including vessel details, target species, duration, and consent of the flag Contracting Party or Cooperating non-Contracting Party, Entity or Fishing Entity. In order to comply with this recommendation, NMFS requires that vessel owners apply for and obtain a NMFS chartering permit before fishing under a chartering arrangement with a foreign entity. A chartering permit would exempt the vessel from domestic regulations as needed. U.S. vessels fishing under a chartering permit cannot concurrently land fish counted against U.S. quotas, however, prohibited species takes are counted against the Incidental Take Statement from the relevant Biological Opinion. The separate application for a chartering permit is covered under OMB 0678-0495. Please contact HMS Management Division to request a chartering permit application.

Requirements

Per the HMS regulations, a valid EFP must be on board the harvesting vessel, must be available when animals are landed, and, in the case of capturing animals for display, must be available when the animal is transported from the vessel to the display facility, and must be presented for inspection upon request of an authorized officer.

An application will not be deemed complete until all of the information on the application is submitted to the HMS Management Division in writing. NMFS has 60 days from the date the application is deemed complete to make a determination on issuing the EFP, although the agency may take additional time to analyze the environmental, economic, and social impacts of proposed research if the activity has not been previously analyzed. An incomplete application will not be considered until corrected in writing.

FEDERAL HMS EXEMPTED FISHING PERMIT REQUIREMENTS AND APPLICATION

An EFP is valid only for the specific authorized vessel(s), samplers, time, area, gear, and species indicated on the EFP. Except for the regulatory exemptions specifically referenced on the permit, all HMS regulations at 50 CFR Part 635 shall apply during the conduct of the fishing activity. All private vessels listed on an EFP should have a valid HMS recreational or commercial HMS permit.

Once the public display and scientific quota has been reached based on reported landings from interim reports, no additional EFPs, SRPs, or Display Permits will be issued.

The issuance of an EFP in no way confers any right to collect/harvest species in waters under state jurisdiction. The appropriate state fish and wildlife agency must be contacted regarding any collection in state waters, as separate state permits may be required for collection/harvest in state waters.

Within 5 days of the collection of any HMS under an EFP, SRP, LOA or Display Permit, an interim report, supplied by NMFS, must be submitted to the address below. These forms include authorized sampler, date of collection, species, fork length, total length, weight, sex, disposition, tag number, gear used, area caught, depth, water temperature, vessel name, name of vessel master, signature, and date of signature. An annual report of all fishing activities and disposition of all fish collected under the permit must also be submitted to NMFS at the address below upon completion of the authorized activities. Both forms are supplied to permit holders at the time the permit is issued and additional (or electronic) copies can be obtained upon request.

Collection of Shark for Display Purposes

Consistent with the 1999 HMS FMP and if deemed appropriate, NMFS will issue a Display Permit with tags, as well as the interim and annual report forms. Each permit will be valid only for the number of animals and tags specified, and each animal must be tagged immediately to be considered an authorized collection. The animal must be tagged aboard the collection vessel and maintained in the animal during the acclimation holding period. However, the tag may be removed once the animal is transported to the facility where it will be displayed. Should an animal be deemed unsuitable for public display during the acclimation period, the animal must be released with the tag intact in a manner that ensures the maximum probability of survival, and the annual report should be returned indicating that the animal has been released. NMFS may issue replacement tags for such released animals.

NMFS will consider accreditation in the American Zoo and Aquarium Association, or equivalent standards, as meeting the requirement of providing adequate facilities for an animal.

HMS EFP Contact Information

Please submit any EFP applications with all of the required information, interim reports, and annual reports to:

Heather Stirratt

Highly Migratory Species Management Division (F/SF1)

National Marine Fisheries Service

1315 East-West Highway

Silver Spring, MD 20910

For additional HMS EFP information, contact Heather Stirratt at 301-713-2347 or 301-713-1917 (fax).

OMB Control No.: 0648-0471

Expiration Date: mm/dd/yyyy

FEDERAL HMS EXEMPTED FISHING PERMIT REQUIREMENTS AND APPLICATION

Type, size, and amount of collection gear: _____

Target Species (species name and number) ¹: _____

Anticipated Non-target Species (to be released or kept?): _____

Protected Species Encounters Likely? When, Where, Why? _____

Authorized Samplers: _____

Holding Facility (if for display): _____

If activities are Federally funded, type, amount, and source: _____

Participating Vessels¹:

1. Vessel Name _____ Owner's Name: _____

Phone Number: _____ Owner's Address: _____

Operator's Name: _____

Vessel Documentation Included? Yes ___ No³ ___ Vessel ID #: _____

If no, when will it be submitted? _____

³ Application will not be deemed complete until all information is provided to NMFS. Please attach documentation (U.S. Coast Guard documentation, state license, or registration) for each vessel to this application.

FEDERAL HMS EXEMPTED FISHING PERMIT REQUIREMENTS AND APPLICATION

2. Vessel Name _____ Owner's Name: _____

Phone Number: _____ Owner's Address: _____

Operator's Name: _____

Vessel Documentation Included? Yes ___ No³ ___ Vessel ID#: _____
If no, when will it be submitted? _____

3. Vessel Name _____ Owner's Name: _____

Phone Number: _____ Owner's Address: _____

Operator's Name: _____

Vessel Documentation Included? Yes ___ No³ ___ Vessel ID#: _____
If no, when will it be submitted? _____

4. Vessel Name _____ Owner's Name: _____

Phone Number: _____ Owner's Address: _____

Operator's Name: _____

Vessel Documentation Included? Yes ___ No³ ___ Vessel ID#: _____
If no, when will it be submitted? _____

Applicant's

Signature: _____ **Date:** _____

PAPERWORK REDUCTION ACT NOTICE: Collection of information through an exempted fishing permit program provides essential information for the conservation and management of Atlantic tunas, swordfish, and billfish. Information on distribution and migratory patterns will be used for stock assessment and in developing international catch sharing agreements. Public reporting burden for this collection of information is estimated to average 40 minutes per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: NMFS, Highly Migratory Species Management Division (F/SF1), 1315 East-West Highway, Silver Spring, MD 20910. Reporting of exempted fishing permit activity is required under the authority of the Atlantic Tunas Convention Act. It is NOAA policy to preserve the confidentiality of information submitted under this reporting requirement, except that NMFS may release such information in aggregate or summary form, such that individual identifiers are not disclosed (NAO 216-100). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. OMB Control No.: 0648-0471, Expiration Date: mm/dd/yyyy.

Highly Migratory Species EFP, SRP, and Display Permit Interim Report

This form is mandatory for all HMS exempted fishing, scientific research, and display permit holders; voluntary for all letter of acknowledgment permit holders. Please complete and mail this form within 5 days of landing/collection/tagging to the National Marine Fisheries Service, HMS Management Division, Attn: Heather Stirratt, 1315 East-West Highway, Silver Spring, MD 20910.

Permit Number: _____
 Vessel Name: _____
 Authorized Sampler (print): _____
 Did you fish? (circle one): YES NO

Gear Used (circle one): PLL BLL GIL HNL HND
 PKN BLK SCU PS TWL HAR BUY CSN
 Other: _____
 Protected Resources Interactions (circle one): YES NO

Certification: I certify that the information provided by me on this form is true to the best of my knowledge, and made in good faith. FALSE STATEMENT ON THIS FORM IS PUNISHABLE BY LAW.
 Name of Permit Holder/Associate (print): _____
 Signature of Permit Holder/Associate: _____
 Date: _____

Fish #	Date (Landed, Caught, or Tagged)	Reported In Commercial Logbooks (Yes or No)	Species (Common Name)	Length (inches)				Weight (pounds)		Sex	Disposition		Price (if sold, U.S. \$)	Tag Information (if applicable)		Area Caught (Lat/Long)	Area Released (Lat/Long)	Port Landed (city, state)	Captivity Location (if kept for public display)	Water	
				Fork	Total	Pectoral Width	Lower Jaw	ww	dw		Dead, Alive, Tagged	Kept, Discarded, Released		Type	Number					Depth (meters)	Surface Temp. (° C)
(Ex)	1/1/04	No	Sandbar		21.3			27		M	Alive	Kept		C	11111				HMS Aquarium	9	27
1																					
2																					
3																					
4																					
5																					
6																					
7																					
8																					
9																					
10																					

PAPERWORK REDUCTION ACT NOTICE: Collection of information through an exempted fishing permit program provides essential information for the conservation and management of Atlantic tunas, swordfish, and billfish. Information on distribution and migratory patterns will be used for stock assessment and in developing international catch sharing agreements. Public reporting burden for this collection of information is estimated to average one hour per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: NMFS, Highly Migratory Species Management Division (F/SF1), 1315 East-West Highway, Silver Spring, MD 20910. Reporting of exempted fishing permit activity is required under the authority of the Atlantic Tunas Convention Act. It is NOAA policy to preserve the confidentiality of information submitted under this reporting requirement, except that NMFS may release such information in aggregate or summary form, such that individual identifiers are not disclosed (NAO 216-100). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. OMB Control No.: 0648-0471, Expiration Date: mm/dd/yyyy.

Instructions for the Interim Report Form

NOTE: All data provided are confidential and will be used to determine the cumulative effects of exempted fishing activities on marine resources as well as provide scientific information on species that would otherwise be prohibited from collection/possession. Consistent and accurate reporting is critical for achieving the benefits of conservation and management of Atlantic Highly Migratory Species fisheries. This form is mandatory for all Exempted Fishing, Scientific Research, and Display Permit holders. This form is voluntary for all Letter of Acknowledgment Permit holders. If you have any questions, please contact the HMS Management Division at (301) 713-2347. For additional copies of the Interim Report Form, respondents may either make additional copies or contact the HMS Management Division at the number listed above. If you did not fish during any one month, please submit a copy of the Interim Report Form within 5 days of the last day of the "no-fish" month, noting that you did not fish by circling the appropriate response under Fishing Activity (i.e., Did you fish: YES NO). If you did fish, you must complete and submit a copy of the Interim Report Form within 5 days of landing, collecting, or tagging fish authorized under an EFP, SRP, or Display Permit. Please use a separate form for each gear type.

STEP 1

Please use a ballpoint pen and print clearly to record the following on the form:

- Permit Number: The permit number located at the top of each permit issued.
- Vessel Name: The name of the vessel authorized and used to collect or tag fish.
- Authorized Sampler (print): The name of the person authorized to sample, collect, or tag fish.
- Fishing Activity: If you did not fish circle no. If you did fish circle yes.
- Gear Used: Circle the appropriate code for the gear type used in the authorized fishing activity. The codes are as follows: PLL = Pelagic Longline; BLL = Bottom Longline; GIL = Gilnet; HNL = Hook and Line (including rod and reel); HND = Handnet; PKN = Plankton Net; BLK = Blockline; SCU = Scuba; PS = Purse Seine; TWL = Trawl; HAR = Harpoon; BUY = Buoy; CSN = Castnet; Other = Any other gear type not listed above.
- Protected Species Interactions: Indicate Yes or No to explain whether any interactions with protected species occurred during the authorized fishing activity. If you answer yes, please enter the date, protected species common name, disposition, area caught, area released, and water information as listed in the table format.
- Name of Permit Holder/Associate: Printed name of permit holder/associate as listed on permit.
- Signature of Permit Holder/Associate: Signed name of permit holder/associate as listed on permit.
- Date: Date of signature as listed above.

STEP 2 (If the answer to "Did you fish?", in Step 1 above, was no, then proceed to STEP 3 below)

Please use a ballpoint pen and print clearly to record the following on the form:

- Date: Calendar date (month/day/year) that fish was landed, caught, or tagged.
- Reported in Commercial Logbooks: Indicate (i.e., Yes or No) whether fish was reported in commercial logbooks.
- Species: Common name of the Highly Migratory Species (HMS) landed, caught, or tagged. Please also include the common name of any protected species incidentally caught during the authorized fishing activity.
- Length: Length of fish in inches (Straight Fork Length)
- Weight: Weight of the fish in either whole weight (ww) or dressed weight (dw).
- Sex: Sex (Male = M; Female = F; Unknown = U) of fish.
- Disposition: Notation of whether the fish is dead, alive, or tagged alive when either kept, discarded or released.
- Price: Sales price (in U.S. dollars) when fish is sold.
- Tag Information: Type of tag may be coded for the following: Conventional = C; PIT Tag = P ; or Archival = A. Tag number is the unique identifier for each tag.
- Area Caught: Location (i.e., Latitude and Longitude) where fish is caught.
- Area Released: Location (i.e., Latitude and Longitude) where fish is released.
- Port Landed: Port location (i.e., city and state) where fish is landed, if kept or sold.
- Captivity Location: Location (i.e., facility name) where fish is kept or offloaded for public display.
- Water: Provide measurement of the water depth (in meters) and surface temperature (in degrees Celsius), if known.

STEP 3

- Make copies of all interim report forms for your records.
- Mail the original interim report form to the National Marine Fisheries Service, HMS Management Division, Attn: Heather Stirratt, 1315 East-West Highway, Silver Spring, MD 20910.

PAPERWORK REDUCTION ACT NOTICE: Collection of information through an exempted fishing permit program provides essential information for the conservation and management of Atlantic tunas, swordfish, and billfish. Information on distribution and migratory patterns will be used for stock assessment and in developing international catch sharing agreements. Public reporting burden for this collection of information is estimated to average one hour per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: NMFS, Highly Migratory Species Management Division (F/SF1), 1315 East-West Highway, Silver Spring, MD 20910. Reporting of exempted fishing permit activity is required under the authority of the Atlantic Tunas Convention Act. It is NOAA policy to preserve the confidentiality of information submitted under this reporting requirement, except that NMFS may release such information in aggregate or summary form, such that individual identifiers are not disclosed (NAO 216-100). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. OMB Control No.: 0648-0471, Expiration Date: mm/dd/yyyy.

Highly Migratory Species EFP, SRP, and Display Permit ANNUAL Report

This form is mandatory for all HMS exempted fishing, scientific research, and display permit holders; voluntary for all letter of acknowledgment permit holders. Please complete this form within 30 days of the expiration of your permit and mail to the National Marine Fisheries Service, HMS Management Division, Attn: Heather Stirratt, 1315 East-West Highway, Silver Spring, MD 20910.

Permit Number: _____
 Vessel Name: _____
 Authorized Sampler (print): _____
 Was NMFS funding used to collect these specimens? (Circle one) Yes No

Certification: I certify that the information provided by me on this form is true to the best of my knowledge, and made in good faith. FALSE STATEMENT ON THIS FORM IS PUNISHABLE BY LAW.
 Name of Permit Holder/Associate (print): _____
 Signature of Permit Holder/Associate: _____
 Date: _____

Species (Common Name)	Total Number Caught	Total Number Kept		Total Number Discarded		Total Number Tagged
		Alive	Dead	Alive	Dead	
Billfish	Blue Marlin					
	White Marlin					
	Longbill Spearfish					
	Atlantic Sailfish					
	Billfish Unspecified					
	Billfish Larvae					
Swordfish	Swordfish					
	Swordfish Larvae					
Tuna	Bluefin Tuna					
	Yellowfin Tuna					
	Bigeye Tuna					
	Albacore Tuna					
	Blackfin Tuna					
	Skipjack Tuna					
	Tuna Unspecified					
	Tuna Larvae					
Large Coastal Sharks	Sandbar					
	Silky					
	Tiger					
	Blacktip					
	Spinner					
	Bull					
	Scalloped Hammerhead					
	Lemon					
	Nurse					
	Great Hammerhead					
	Other:					
Small Coastal Sharks	Finetooth					
	Bonnethead					
	Blacknose					
	Atlantic Sharpnose					
Prohibited Sharks	Sand Tiger					
	Bigeye Thresher					
	Night					
	Dusky					
	Atlantic Angel					
	Other:					
Protected Resources	Turtles (sp. _____)					
	Other:					

PAPERWORK REDUCTION ACT NOTICE: Collection of information through an exempted fishing permit program provides essential information for the conservation and management of Atlantic tunas, swordfish, and billfish. Information on distribution and migratory patterns will be used for stock assessment and in developing international catch sharing agreements. Public reporting burden for this collection of information is estimated to average 40 minutes per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: NMFS, Highly Migratory Species Management Division (F/SF1), 1315 East-West Highway, Silver Spring, MD 20910. Reporting of exempted fishing permit activity is required under the authority of the Atlantic Tunas Convention Act. It is NOAA policy to preserve the confidentiality of information submitted under this reporting requirement, except that NMFS may release such information in aggregate or summary form, such that individual identifiers are not disclosed (NAO 216-100). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. OMB Control No.: 0648-0471, Expiration Date: mm/dd/yyyy.

Instructions for the Annual Report Form

NOTE: All data provided are confidential and will be used to determine the cumulative effects of exempted fishing activities on marine resources as well as provide scientific information on species that would otherwise be prohibited from collection/possession. Consistent and accurate reporting is critical for achieving the benefits of conservation and management of Atlantic Highly Migratory Species fisheries. This form is mandatory for all Exempted Fishing, Scientific Research, and Display Permit holders. This form is voluntary for all Letter of Acknowledgment Permit holders. If you have any questions, please contact the HMS Management Division at (301) 713-2347. For additional copies of the Interim Report Form, respondents may either make additional copies or contact the HMS Management Division at the number listed above.

STEP 1

Please use a ballpoint pen and print clearly to record the following on the form:

- Permit Number: The permit number located at the top of each permit issued.
- Vessel Name: The name of the vessel authorized and used to collect or tag fish.
- Authorized Sampler (print): The name of the person authorized to sample, collect, or tag fish.
- Was NMFS funding used to collect these specimens? Circle yes or no, as appropriate.
- Name of Permit Holder/Associate: Printed name of permit holder/associate as listed on permit.
- Signature of Permit Holder/Associate: Signed name of permit holder/associate as listed on permit.
- Date: Date of signature as listed above.

STEP 2

Please use a ballpoint pen and print clearly to record the following on the form:

- Species (Common Name): For each species caught during the life of the permit, please record the following information:
 1. Total Number Caught: Sum total = should equal the sum of the next five columns combined.
 2. Total Number Kept: Sum total of fish/protected resources kept dead as well as sum total of fish kept alive.
 3. Total Number Discarded: Sum total of fish/protected resources discarded dead as well as sum total of fish/protected resources discarded alive (excluding fish/protected resources tagged and released alive).
 4. Total Number Tagged: Sum total of fish/protected resources tagged. This sum does not include fish/protected resources discarded alive.

STEP 3

- Make copies of all interim report forms for your records.
- Mail the original interim report form to the National Marine Fisheries Service, HMS Management Division, Attn: Heather Stirratt, 1315 East-West Highway, Silver Spring, MD 20910.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

RIN: 1660-AA17

Hazard Mitigation Grant Program; Correction

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Correcting amendment.

SUMMARY: FEMA announces a technical correction to 44 CFR 206.435 which was amended in the Federal Register on August 30, 1990, at 55 FR 35532 and again amended on February 26, 2002, at 67 FR 8844. This document corrects a reference made in § 206.435 to the old § 206.434 (b), now paragraph (c).

DATES: This document is effective November 10, 2003.

FOR FURTHER INFORMATION CONTACT: Margaret Lawless, Division Director, FEMA, 500 C Street, SW., Room 417, Washington, DC 20472; 202-646-3027.

SUPPLEMENTARY INFORMATION:**Background**

FEMA announces a technical correction to 44 CFR 206.435. The final rule entitled Disaster Assistance; Hazard Mitigation Grant Program (Subpart N) was published on August 30, 1990, at 55 FR 35532. Changes to the rule at § 206.434 were subsequently published on February 26, 2002, at 67 FR 8844. These changes resulted in § 206.434 redesignating *Minimum project criteria* from paragraph (b) to (c). This correcting amendment changes a reference to the old paragraph (b), to paragraph (c) at § 206.435(b).

Need for Correction

As published, the final regulations contain an error which may prove misleading, and needs to be clarified.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Grant programs, Mitigation planning, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 206 is corrected by making the following correcting amendment:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

■ 1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

■ 2. Revise the inductive text of paragraph (b) of § 206.435 to read as follows:

§ 206.435 Project identification and selection criteria.

* * * * *

(b) *Selection.* The State will establish procedures and priorities for the selection of mitigation measures. At a minimum, the criteria must be consistent with the criteria stated in § 206.434(c) and include:

* * * * *

Dated: October 31, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03-28167 Filed 11-7-03; 8:45 am]

BILLING CODE 9110-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 021113274-3267-02; I.D. 031501A]

RIN 0648-A079

Atlantic Highly Migratory Species; Exempted Fishing Activities

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule in accordance with framework procedures for adjusting management measures of the Final Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), and Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish FMP). This final rule modifies existing regulations for Atlantic highly migratory species (HMS) exempted fishing activities, with the

intent of improving monitoring and reporting of exempted fishing activities for Atlantic HMS, primarily those which are collected for public display purposes and those targeted for scientific research.

DATES: Effective December 10, 2003.

ADDRESSES: Written reports on fishing activities and applications for Exempted Fishing Permits and Scientific Research Permits should be submitted to Sari Kiraly or Heather Stirratt, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly or Heather Stirratt at 301-713-2347, fax 301-713-1917, e-mail Sari.Kiraly@noaa.gov or Heather.Stirratt@noaa.gov.

SUPPLEMENTARY INFORMATION: Under 50 CFR 635.32, and consistent with 50 CFR 600.745, NMFS may authorize, for limited testing, public display, and scientific data collection purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an Exempted Fishing Permit (EFP) or a Scientific Research Permit (SRP) issued by NMFS in accordance with criteria and procedures specified in those sections. As necessary, an EFP or SRP would exempt the named party(ies) from otherwise applicable regulations under 50 CFR part 635. Such exemptions could address fishery closures, possession of prohibited species, commercial permitting requirements, and retention and minimum size limits.

This final rule was developed largely in response to ongoing concerns related to EFPs issued in the past for the purpose of collecting regulated HMS, particularly those collected for public display, and also takes into consideration concerns related to the reporting of permitted HMS scientific research activities. It is intended to strengthen the existing regulations which govern these permit related activities. This final rule is in accordance with framework procedures for adjusting management measures provided in the Final HMS FMP, and Amendment 1 to the Billfish FMP.

Exempted Fishing Operations

With respect to exempted fishing activities, NMFS finalizes the following requirements:

(1) Collectors of HMS for public display are required to notify the local NMFS Office for Law Enforcement at

least 24 hours prior to departing on a collection trip as to collection plans and location, and number of animals to be collected. This requirement is included so that the local NMFS Office for Law Enforcement can be aware of and monitor exempted collection activities within its jurisdiction. Additionally, this information can be made available by NMFS to state level enforcement agencies.

(2) Collectors of HMS for public display have the option of using conventional dart tags or microchip Passive Integrated Transponder (PIT) tags. Both types of tags will be supplied by NMFS. Unless PIT tags are specifically requested in the EFP application, conventional dart tags will be issued. Terms and conditions associated with the use of the tags issued will be specified in the EFP on a case-by-case basis.

(3) To minimize mortality of targeted animals as well as incidental bycatch potentially associated with the live capture of HMS, NMFS may specify permit conditions regarding fishing activities, such as gear deployment, monitoring, or soak time, if warranted, on a case-by-case basis.

(4) NMFS may select for at-sea observer coverage any vessel issued an EFP or SRP under this section. Selected vessels must comply with requirements specified under 50 CFR 635.7, 600.725, and 600.746. This requirement will be used to verify reports and monitor the takes of HMS and protected species resulting from fishing activities.

(5) This final rule also modifies EFP requirements for swordfish offloading. For the pelagic longline directed swordfish fishery, as vessel monitoring systems (VMS) are now required to be installed and operating on vessels, EFPs to allow delayed offloading after a closure are no longer required.

Reporting Requirements

To enhance data collection and reporting, NMFS finalizes the following reporting requirements:

(1) Applications for EFP and SRP renewals are required to include all reports specified in the applicant's previous permit, including the year-end report, all delinquent reports for permits issued in prior years, and all other specified information, in order for the renewal application to be considered complete. An EFP or SRP will not be issued for incomplete applications. This new requirement will reinforce the importance to NMFS of specified reports on the activities conducted under the permit.

(2) Fishing activities and disposition of all HMS either retained, discarded

alive or dead, or tagged and released under an EFP or SRP must be reported within 5 days of the fishing activity, or as specified in the permit, without regard to whether the fishing activity occurs in or outside the Exclusive Economic Zone (EEZ). Dead discards will be counted against appropriate annual quotas. Also, an annual written summary report must be submitted to NMFS within 30 days after the expiration date of the permit. Reporting of such HMS fishing activity will provide important information as to the actual numbers of any animals that are removed from the stocks. If an individual issued a Federal EFP or SRP captures no HMS in any given month, either in or outside the EEZ, that individual must submit a "no-catch" report to NMFS within 5 days of the last day of that month.

(3) Several prohibitions are also added or modified to address: (a) submission of false information on permit applications or activity reports, and (b) violations of any of the terms and conditions of the EFP or SRP. These prohibitions are needed to facilitate enforcement of EFP and SRP application and reporting requirements. Essentially, they extend the permitting, record-keeping, and reporting requirements otherwise applicable to vessels and dealers to those persons issued EFPs and SRPs.

Comments and Responses

NMFS received a number of comments on the proposed rule during the comment period. In addition to the provisions contained in the proposed rule, comments were requested on several other potential regulatory provisions. Major comments received are summarized here together with responses.

Exempted Fishing Operations

Comment 1: The 72-hour pre-departure notification for collecting HMS may be problematic. NMFS should consider a more reasonable time frame of 24 - 48 hours.

Response: NMFS has modified the final rule to require a notification time of at least 24 hours. This time frame will still allow sufficient time for the local NMFS Office for Law Enforcement to respond and notify local officials as necessary.

Comment 2: Commenters generally disagreed with notification to the NMFS Office for Law Enforcement upon completion of a collection trip and 48 hours prior to shipping animals for display as being unreasonable. One commenter supported the provision.

Response: While notification upon completion of a trip and prior to shipping animals would serve to better track collection activities, NMFS has not included these provisions in the final rule because commenters objected on the grounds that: 1) it is unnecessary, since catch reports are submitted; and 2) such notification may be logistically difficult because transport times are not always predictable, as they are based on animal acclimation and health, transport staff, and equipment availability.

Comment 3: Commenters generally objected to the use of PIT tags on the grounds that there is insufficient information on the use of PIT tags in fishes, particularly sharks, and there are potential problems associated with their use. These commenters noted that given these uncertainties, a requirement at this time that PIT tags be used for HMS collected for display is not warranted. One commenter supported the use of PIT tags.

Response: The requirement to use PIT tags was included in the proposed rule in response to commercial collectors who objected to the use of the conventional dart tags because of their experience with infections and scarring in the animals and requested an alternative means of tagging. PIT tags were selected because aquariums and scientific researchers have used them to identify HMS. The final rule reflects the concerns associated with the use of PIT tags by not requiring collectors to use PIT tags, but by specifying that they may be used as an alternative to dart tags. NMFS will provide PIT tags upon request.

Comment 4: Commenters generally disagreed with the provision that would allow NMFS to specify fishing practices for collecting HMS for display in order to minimize mortalities. Specifically, commenters felt that NMFS should leave this determination to the collection professionals, as it is in their best interest to minimize or eliminate mortalities by using the most effective and efficient fishing gear and associated practices. One commenter supported the provision.

Response: It is in the best interest of collectors to minimize mortalities of the fish they collect. However, it is NMFS' responsibility to manage the HMS fisheries and minimize unnecessary mortalities of the target species and other species, such as sea turtles and seabirds, that may interact with fishing gear. Thus, the language in the final rule has been modified to more accurately reflect NMFS intent that NMFS may specify collection conditions in the permit as necessary.

Comment 5: Commenters generally disagreed with NMFS placing at-sea observers on board HMS collection vessels and suggested that NMFS should consider alternatives. Commenters noted that collecting operations are very specific and potentially hazardous, and that only experienced, trained personnel should be on board the vessels. Also, the vessels used are often small and crowded with no place for inexperienced newcomers who may jeopardize collecting operations. One commenter supported the provision to place observers on board collection vessels.

Response: At-sea observers are an important means for fishery managers to collect information on fishing activities that are generally considered too burdensome for fishermen to collect, either due to the specific details required or to potential interference with fishing operations. They also provide data that are used to verify other reporting requirements, allowing for more responsive management. In cases of overfished stocks, such as many HMS, or protected species such as sea turtles, observer data can be used to improve stock assessments. Observers are fully trained before being placed on board a vessel and should not interrupt fishing operations. Additionally, observers should be able to help the vessel captain and crew in releasing protected species. As specified in 50 CFR 635.7, 600.725, and 600.746, NMFS will not place an observer on a vessel that is deemed unsafe.

Reporting Requirements

Comment 6: The requirement that year-end reports be a mandatory component of a permit renewal package is appropriate.

Response: NMFS agrees and has retained this requirement in the final rule.

Comment 7: Commenters generally held that the reporting of dead discards and no-catch reporting is burdensome and not necessary. Because the intention is to collect and maintain live animals, the number of dead discards is very small and does not warrant the paperwork. Similarly, monthly no-catch reporting is questionable because collecting is not a year-round activity. Finally, the requirement to submit catch and no-catch reports within a 5-day time frame is impractical, and a more reasonable time frame should be considered. Conversely, one commenter supported the dead discard and no-catch reporting provisions.

Response: Through catch reports, NMFS will be better able to determine if many more animals are authorized for

collection than actually are collected. These reporting requirements will allow for more accurate counting against the public display quota or relevant quotas recommended by the International Commission for the Conservation of Atlantic Tunas. Including dead discards in the counting will further enhance the accuracy of stock assessments and the monitoring of species subject to dead discard allowances. Similarly, NMFS will be able to better evaluate collection trends by confirming those times when no animals are collected. NMFS believes that a 5-day time frame for submitting reports is reasonable, as the report forms take only a few minutes to complete and can be mailed upon the vessel's return to shore. Therefore, the dead discard and no-catch reporting requirements, as well as the 5-day time frame for submitting reports, have been retained in the final rule.

Comment 8: Reporting collections in state waters should not be mandatory, as this further complicates an already complicated process. If NMFS wants data on state-permitted collections, the information should be obtained from the states. Also, NMFS should pursue the proposed Federal-state coordination process that has been discussed and which could resolve this issue.

Response: NMFS is in favor of developing a coordinated Federal-state permitting program. However, as the states have differing permit and reporting requirements, the most efficient interim solution is for federally permitted collectors to provide information on their collections regardless of where the fishing activity occurs. This will enable NMFS to assess better the total number of HMS being removed from the stocks.

Comment 9: Commenters support the prohibitions provisions regarding submission of false information and violations of the terms and conditions of the permit.

Response: NMFS retains these provisions in the final rule.

Request for Comments on Potential Regulatory Provisions

Comment 10: There was general agreement that EFP applicants should be required to demonstrate that holding facilities adequate for HMS animal husbandry are maintained. Commenters also suggested that existing accreditation organizations be involved in this process. However, some commenters noted that accreditation does take time, and NMFS should not preclude collection of animals while certification is pending

Response: NMFS is considering these types of regulations and may issue a proposed rule in the future.

Comment 11: Commenters generally held that denying EFPs for the collection of HMS that are difficult to maintain may be denying the development of technological advances in aquarium science and research. Additionally, commenters expressed concern regarding the data to be used to justify such restrictions. However, one commenter supported the proposal.

Response: NMFS agrees that there could be future technological advances in animal husbandry, and would not want to inhibit such advances. However, restricting the collection of certain animals may be necessary to avoid unwarranted mortality in stressed populations. NMFS will continue to consider this type of measure and may issue a proposed rule in the future.

Comment 12: Several commenters supported the issuance of EFPs only to display facilities in that this may eliminate commercial collectors collecting HMS in advance of actual purchases. Other commenters disagreed with this proposal, holding that independent commercial collectors should continue to be authorized to collect HMS, some companies having made significant contributions to improving the process.

Response: NMFS will continue to consider this approach and may issue a proposed rule in the future.

Comment 13: Commenters generally questioned the necessity or disagreed with the proposal regarding the issuance of a NMFS display permit in order to maintain HMS in captivity for display purposes. These commenters noted the existence of other regulatory entities and accreditation organizations which can adequately address the animal welfare concerns regarding public display facilities. Questions were raised as to the procedures and authority for such a display permit. One commenter supported the proposal, but expressed concern regarding how this would be implemented.

Response: NMFS will continue to consider this approach and may issue a proposed rule in the future.

Changes From the Proposed Rule

A number of changes to the regulations were made in response to comments received on the proposed rule:

- (1) The proposed requirement that collectors of HMS for public display notify the local NMFS Office for Law Enforcement 72 hours prior to departing on a collection trip has been reduced to a minimum of 24 hours prior

notification. Also, the proposed requirements to notify the NMFS Office for Law Enforcement upon returning from a collection trip and 48 hours prior to shipping HMS to other locations have been eliminated.

(2) The proposed mandatory use of PIT tags in lieu of conventional dart tags for HMS collected for public display has been changed so that collectors will have the option of using either PIT tags or the conventional dart tags that NMFS currently issues. NMFS will supply PIT tags only upon request by EFP applicants, otherwise dart tags will be issued.

(3) The proposed provision that NMFS will specify permit conditions regarding HMS collection activities on a case-by-case-basis has been clarified to state that permit conditions may be specified by NMFS if warranted.

(4) The regulatory text has been reorganized to clarify the regulations and the requirements for SRPs versus EFPs. In addition, NMFS revised § 635.32 to simplify the text to state that the notification and reporting requirements apply to individuals with EFPs or SRPs regardless of where the fishing activity occurs.

Classification

This final rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*

For the purposes of NOAA Administrative Order (NAO) 216-6, the Assistant Administrator for Fisheries (AA) has determined that this action would not have a significant effect, individually or cumulatively, on the human environment, that it is consistent with the environmental impact statement for the FMP, and that it involves only minor technical additions, corrections or changes to the regulations. Accordingly, under sections 5.05 and 6.03a3(b) of NAO 216-6, this action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget Control Number.

This final rule contains a new collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement for exempted fishing activity reporting has been cleared by OMB under Control Number 0648-0471. The public reporting burden for this collection of information is estimated to average 5 minutes per notification phone call at the beginning of a collection trip. The estimated time to prepare a catch report required by an EFP issued for display collection is 5 minutes, and to prepare a "no-catch" report the estimated time is 2 minutes. The estimated application preparation and year-end report preparation times for display EFPs are 30 minutes each. Application of a PIT or dart tag to a HMS collected for public display is estimated to take 2 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS (see **FOR FURTHER INFORMATION CONTACT**), and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel of Advocacy of the Small Business Administration that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. No comments were received on the economic impact of this rule. Accordingly, neither an initial regulatory flexibility analysis nor a final regulatory flexibility analysis was prepared for this final rule.

The AA has determined that this action will have no impacts on the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states/territories that have approved coastal zone management plans under the Coastal Zone Management Act. NMFS submitted requests for consistency determinations to affected states/territories with the proposed rule. Nine states/territories replied that the proposed action was consistent with their respective coastal zone management programs. Six states/territories did not respond within the allowed time frame; therefore, their concurrence is presumed.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign Relations, Imports, Penalties,

Reporting and recordkeeping requirements, Treaties.

Dated: November 3, 2003.

William T. Hogarth,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.7, paragraph (a) is revised to read as follows:

§ 635.7 At-sea observer coverage.

(a) *Applicability.* NMFS may select for at-sea observer coverage any vessel that has an Atlantic HMS, tunas, shark or swordfish permit issued under § 635.4 or § 635.32. Vessels permitted in the HMS Charter/Headboat and Angling categories will be requested to take observers on a voluntary basis. When selected, vessels issued any other permit under § 635.4 or § 635.32 are required to take observers on a mandatory basis.

* * * * *

■ 3. In § 635.28, paragraph (c)(1)(i)(A) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5 N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a pelagic longline. However, North Atlantic swordfish legally taken prior to the effective date of the closure may be possessed in the Atlantic Ocean north of 5 N. lat. or landed in an Atlantic coastal state on a vessel with a pelagic longline on board, provided the harvesting vessel does no fishing after the closure in the Atlantic Ocean north of 5 N. lat., and reports positions with a vessel monitoring system, as specified in § 635.69. Additionally, legally taken swordfish from the South Atlantic swordfish stock may be possessed or landed north of 5 N. lat. provided the harvesting vessel does no fishing on that trip north of 5 N. lat., and reports positions with a vessel monitoring system as specified in § 635.69. NMFS may adjust the incidental catch retention limit by filing with the Office of the Federal Register for publication notification of the change at least 14

days before the effective date. Changes in the incidental catch limits will be based upon the length of the directed fishery closure and the estimated rate of catch by vessels fishing under the incidental catch quota.

* * * * *

■ 4. In § 635.32, paragraph (c)(1) is revised, paragraph (c)(4) is removed, and paragraphs (d) and (e) are added to read as follows:

§ 635.32 Specifically authorized activities.

* * * * *

(c) *Exempted fishing permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits.

* * * * *

(d) *Applications and renewals.* Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register for publication notification on an annual or, as necessary, more frequent basis to report on previously authorized exempted fishing activities and to solicit public comment on anticipated exempted fishing requests. Applications for EFP and SRP renewals are required to include all reports specified in the applicant's previous EFP or SRP, including the year-end report, all delinquent reports for EFPs or SRPs issued in prior years, and all other specified information, in order for the renewal application to be considered complete. In situations of delinquent reports, renewal applications will be

deemed incomplete and a permit will not be issued under this section.

(e) *Terms and conditions.* (1) Written reports on fishing activities and disposition of catch for all HMS either retained, discarded alive or dead, or tagged and released under a permit issued under this section, must be submitted to NMFS, at an address designated by NMFS, within 5 days of the fishing activity, without regard to whether the fishing activity occurs in or outside the Exclusive Economic Zone (EEZ). Also, an annual written summary report of all fishing activities and disposition of all fish captured under the permit must be submitted to NMFS, at an address designated by NMFS, within 30 days after the expiration date of the permit. NMFS will provide specific conditions and requirements as needed, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

(2)(i) Collectors of HMS for public display must notify the local NMFS Office for Law Enforcement at least 24 hours, excluding weekends and holidays, prior to departing on a collection trip, regardless of whether the fishing activity will occur in or outside the EEZ, as to collection plans and location and the number of animals to be collected. In the event that a NMFS agent is not available, a message may be left.

(ii) All live HMS collected for public display are required to have either a conventional dart tag or a microchip Passive Integrated Transponder (PIT) tag applied by the collector at the time of

the collection. Both types of tags will be supplied by NMFS. Conventional dart tags will be issued unless PIT tags are specifically requested in the permit application and their use approved by NMFS. Terms and conditions of the permit will address requirements associated with the use of the tags supplied on a case-by-case basis.

(3) Permit conditions regarding fishing activities, such as gear deployment, monitoring, or soak time, may be specified by NMFS if warranted, on a case-by-case basis.

(4) NMFS may select for at-sea observer coverage any vessel issued a permit under this section. Selected vessels must comply with the requirements for observer accommodation and safety specified at §§ 635.7, 600.725, and 600.746 of this chapter.

■ 5. In § 635.71, paragraphs (a)(6) and (a)(26) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in §§ 635.5 and 635.32 or in the terms and conditions of a permit issued under § 635.4 or an exempted fishing permit or scientific research permit issued under § 635.32.

* * * * *

(26) Violate the terms and conditions or any provision of a permit issued under § 635.4, or an exempted fishing permit or scientific research permit issued under § 635.32.

* * * * *

§ 600.745 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity.* Nothing in this section is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities in the EEZ are encouraged to submit to the appropriate Regional Administrator, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Administrator, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required by any other applicable law. If the Regional Administrator, Director, or designee, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Administrator, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Administrator, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity or recommend the applicant request an EFP. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activity. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Exempted fishing*—(1) *General.* A NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental har-

vest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. The Regional Administrator or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Administrator or Director to find out the applicable fee.

(2) *Application.* An applicant for an EFP shall submit a completed application package to the appropriate Regional Administrator or Director, as soon as practicable and at least 60 days before the desired effective date of the EFP. Submission of an EFP application less than 60 days before the desired effective date of the EFP may result in a delayed effective date because of review requirements. The application package must include payment of any required fee as specified by paragraph (b)(1) of this section, and a written application that includes, but is not limited to, the following information:

- (i) The date of the application.
- (ii) The applicant's name, mailing address, and telephone number.
- (iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.
- (iv) For each vessel to be covered by the EFP, as soon as the information is available and before operations begin under the EFP:
 - (A) A copy of the USCG documentation, state license, or registration of each vessel, or the information contained on the appropriate document.
 - (B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.
- (v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest

Fishery Conservation and Management

§ 600.745

necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on marine mammals or endangered species.

(vi) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(vii) The signature of the applicant.

(viii) The Regional Administrator or Director, as appropriate, may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application or an application for which the appropriate fee has not been paid will not be considered until corrected in writing and the fee paid. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested.

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Administrator or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Administrator or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the FEDERAL REGISTER with a brief description of the proposal, and the intent of NMFS to issue an EFP. Interested persons will be given a 15- to 45-day opportunity to comment and/or comments will be requested during public testimony at a Council meeting. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Administrator or Director also will forward copies of the application to the Council(s), the USCG, and the appropriate fishery management agencies of affected states, accompanied by the following information:

(A) The effect of the proposed EFP on the target and incidental species, including the effect on any TAC.

(B) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on marine mammals and threatened or endangered species.

(ii) If the application is complete and warrants additional consultation, the Regional Administrator or Director may consult with the appropriate Council(s) concerning the permit application during the period in which comments have been requested. The Council(s) or the Administrator or Regional Administrator shall notify the applicant in advance of any meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving responses from the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Administrator or Director shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or threatened or endangered species in a significant way; or

(C) Issuance of the EFP would have economic allocation as its sole purpose; or

(D) Activities to be conducted under the EFP would be inconsistent with the intent of this section, the management objectives of the FMP, or other applicable law; or

(E) The applicant has failed to demonstrate a valid justification for the permit; or

(F) The activity proposed under the EFP could create a significant enforcement problem.

(iv) The decision of a Regional Administrator or Director to grant or deny an EFP is the final action of NMFS. If the permit, as granted, is significantly different from the original application, or is denied, NMFS may publish notification in the FEDERAL REGISTER describing the exempted fishing to be conducted under the EFP or the reasons for denial.

(v) The Regional Administrator or Director may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing, including, but not limited to:

(A) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.

(B) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.

(C) The time(s) and place(s) where exempted fishing may be conducted.

(D) The type, size, and amount of gear that may be used by each vessel operated under the EFP.

(E) The condition that observers, a vessel monitoring system, or other electronic equipment be carried on board vessels operated under an EFP, and any necessary conditions, such as predeployment notification requirements.

(F) Reasonable data reporting requirements.

(G) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.

(H) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures as set out in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

(4) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(5) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* EFPs issued under this section are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(7) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(8) *Sanctions.* Failure of a permittee to comply with the terms and conditions of an EFP may be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement purposes will be governed by 15 CFR part 904, subpart D.

(c) *Reports.* (1) Persons conducting scientific research activity are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

(2) Persons fishing under an EFP are required to report their catches to the appropriate Regional Administrator or Director, as specified in the EFP.

(d) *Exempted educational activities—*(1) *General.* A NMFS Regional Administrator or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The decision of a Regional Administrator or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Administrator or Director in accordance with the criteria

Fishery Conservation and Management

§ 600.745

and procedures specified in this section. Such authorization will be issued without charge.

(2) *Application.* An applicant for an exempted educational activity authorization shall submit to the appropriate Regional Administrator or Director, at least 15 days before the desired effective date of the authorization, a written application that includes, but is not limited to, the following information:

- (i) The date of the application.
- (ii) The applicant's name, mailing address, and telephone number.
- (iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.
- (iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.
- (v) The scope and duration of the activity.
- (vi) For each vessel to be covered by the authorization:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(vii) The species and amounts expected to be caught during the exempted educational activity.

(viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(ix) The signature of the applicant.

(x) The Regional Administrator or Director may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a determination whether the ap-

plication contains all of the required information, is consistent with the goals, objectives, and requirements of the FMP or regulations and other applicable law, and constitutes a valid exempted educational activity. The applicant will be notified in writing of the decision within 5 working days of receipt of the application.

(ii) The Regional Administrator or Director may attach terms and conditions to the authorization, consistent with the purpose of the exempted educational activity, including, but not limited to:

(A) The maximum amount of each regulated species that may be harvested.

(B) The time(s) and place(s) where the exempted educational activity may be conducted.

(C) The type, size, and amount of gear that may be used by each vessel operated under the authorization.

(D) Reasonable data reporting requirements.

(E) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.

(F) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activities as a condition of the authorization.

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), species and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

(4) *Duration.* Unless otherwise specified, authorization for an exempted educational activity is effective for no longer than 1 year, unless revoked, suspended, or modified. Authorizations may be renewed following the application procedures in this section.

(5) *Alteration.* Any authorization that has been altered, erased, or mutilated is invalid.

§ 600.746

50 CFR Ch. VI (10-1-04 Edition)

(6) *Transfer.* Authorizations issued under this paragraph (d) are not transferable or assignable.

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued or be in possession of the applicant to which it was issued while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of fishing, despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.746 Observers.

(a) *Applicability.* This section applies to any fishing vessel required to carry an observer as part of a mandatory observer program or carrying an observer as part of a voluntary observer program under the Magnuson-Stevens Act, MMPA (16 U.S.C. 1361 *et seq.*), the ATCA (16 U.S.C. 971 *et seq.*), the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), or any other U.S. law.

(b) *Observer requirement.* An observer is not required to board, or stay aboard, a vessel that is unsafe or inadequate as described in paragraph (c) of this section.

(c) *Inadequate or unsafe vessels.* (1) A vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions if it does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 300, 600, 622, 635, 648, 660, and 679) or if it has not passed a USCG safety examination or inspection. A vessel that has passed a USCG safety examination or inspection must display one of the following:

(i) A current Commercial Fishing Vessel Safety Examination decal, issued within the last 2 years, that certifies compliance with regulations found in 33 CFR, chapter I and 46 CFR, chapter I;

(ii) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(iii) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(2) Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner/operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually examine any such item.

(3) *Pre-trip safety check.* Prior to each observed trip, the observer is encouraged to briefly walk through the vessel's major spaces to ensure that no obviously hazardous conditions exist. In addition, the observer is encouraged to spot check the following major items for compliance with applicable USCG regulations:

(i) Personal flotation devices/immersion suits;

(ii) Ring buoys;

(iii) Distress signals;

(iv) Fire extinguishing equipment;

(v) Emergency position indicating radio beacon (EPIRB), when required; and

(vi) Survival craft, when required.

(d) *Corrective measures.* If a vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions, NMFS may require the vessel owner or operator either to:

(1) Submit to and pass a USCG safety examination or inspection; or

(2) Correct the deficiency that is rendering the vessel inadequate or unsafe (e.g., if the vessel is missing one personal flotation device, the owner or operator could be required to obtain an additional one), before the vessel is boarded by the observer.

(e) *Timing.* The requirements of this section apply both at the time of the observer's boarding, at all times the observer is aboard, and at the time the observer is disembarking from the vessel.

(f) *Effect of inadequate or unsafe status.* A vessel that would otherwise be

§ 635.32

50 CFR Ch. VI (10-1-04 Edition)

except that dealers may purchase a shark from an owner or operator of a vessel that does not have a commercial permit for shark if that vessel fishes exclusively in state waters. Dealers may purchase a shark from an owner or operator of fishing vessel that has a permit issued under this part only when the fishery for that species group has not been closed, as specified in § 635.28(b)(3).

(5) A dealer issued a permit under this part may not purchase from an owner or operator of a fishing vessel shark fins that were not harvested in accordance with the regulations found at part 600, subpart N, of this chapter and in § 635.30(c).

(d) *Swordfish.* (1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may sell such swordfish only to a dealer who has a valid permit for swordfish issued under this part.

(2) Dealers may purchase a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part.

[64 FR 29135, May 28, 1999, as amended at 67 FR 6201, Feb. 11, 2002; 67 FR 77438, Dec. 18, 2002; 68 FR 715, Jan. 7, 2003; 69 FR 53362, Sept. 1, 2004]

§ 635.32 Specifically authorized activities.

(a) *General.* Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize for the conduct of scientific research or the acquisition of information and data, for the enhancement of safety at sea, for the purpose of collecting animals for public education or display, or for investigating the reduction of bycatch, economic discards or regulatory discards, activities otherwise prohibited by the regulations contained in this part. Activities subject to the provisions of this section include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS, exempted fishing and exempted educational ac-

tivities, or programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, exempted fishing permit, scientific research permit, or display permit issued in response to requests for authorization under this section. For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization. Inspection requirements specified in 635.5(e) of this part apply to the owner or operator of a fishing vessel that has been issued a exempted fishing permit, scientific research permit, or display permit.

(b) *Scientific research activities.* For the purposes of all species covered under this part regulated under the authority of ATCA, the provisions for research plans under § 600.745(a) and reports under § 600.745(c)(1) of this chapter are mandatory. In such cases of authorized scientific research activities, NMFS shall issue scientific research permits. For scientific research activities involving the capture of Atlantic sharks, research plans and reports are requested; letters of acknowledgment shall be issued by NMFS as indicated under § 600.745(a) of this chapter.

(c) *Exempted fishing permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits.

(2) [Reserved]

(d) *Display permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue display permits.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid display permit is required to fish for, take, retain, or possess an HMS in or from the Atlantic EEZ for the purposes of public

display. A valid display permit must be on board the harvesting vessel, must be available when the fish is landed, must be available when the fish is transported to the display facility, and must be presented for inspection upon request of an authorized officer. A display permit is valid for the specific time, area, gear, and species specified on it. Species landed under a display permit shall be counted against the appropriate quota specified in § 635.27 or as otherwise provided in the display permit.

(3) To be eligible for a display permit, a person must provide all information concerning his or her identification, numbers by species of HMS to be collected, when and where they will be collected, vessel(s) and gear to be used, description of the facility where they will be displayed, and any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(4) Collectors of HMS for public display must notify the local NMFS Office for Law Enforcement at least 24 hours, excluding weekends and holidays, prior to departing on a collection trip, regardless of whether the fishing activity will occur in or outside the EEZ, as to collection plans and location and the number of animals to be collected. In the event that a NMFS agent is not available, a message may be left.

(5) All live HMS collected for public display are required to have either a conventional dart tag or a microchip Passive Integrated Transponder (PIT) tag applied by the collector at the time of the collection. Both types of tags will be supplied by NMFS. Conventional dart tags will be issued unless PIT tags are specifically requested in the permit application and their use approved by NMFS. Terms and conditions of the permit will address requirements associated with the use of the tags supplied on a case-by-case basis.

(e) *Applications and renewals.* Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register for publication notification on

an annual or, as necessary, more frequent basis to report on previously authorized exempted fishing, scientific research, or public display activities and to solicit public comment on anticipated EFP, SRP, LOA, or public display permit requests. Applications for EFP, SRP, and public display permit renewals are required to include all reports specified in the applicant's previous EFP, SRP, or public display permit including the year-end report, all delinquent reports for EFPs, SRPs, and public display permits issued in prior years, and all other specified information, in order for the renewal application to be considered complete. In situations of delinquent reports, renewal applications will be deemed incomplete and a permit will not be issued under this section.

(f) *Terms and conditions.* (1) Written reports on fishing activities and disposition of catch for all HMS either retained, discarded alive or dead, or tagged and released under a permit issued under this section, must be submitted to NMFS, at an address designated by NMFS, within 5 days of the fishing activity, without regard to whether the fishing activity occurs in or outside the EEZ. Also, an annual written summary report of all fishing activities and disposition of all fish captured under the permit must be submitted to NMFS, at an address designated by NMFS, within 30 days after the expiration date of the permit. NMFS will provide specific conditions and requirements as needed, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

(2) Permit conditions regarding fishing activities, such as gear deployment, monitoring, or soak time, may be specified by NMFS if warranted, on a case-by-case basis.

(3) NMFS may select for at-sea observer coverage any vessel issued a permit under this section. Selected vessels must comply with the requirements for observer accommodation and safety

§ 635.33

50 CFR Ch. VI (10-1-04 Edition)

specified at §§ 635.7, 600.725, and 600.746 of this chapter.

[64 FR 29135, May 28, 1999, as amended at 68 FR 63742, Nov. 10, 2003; 68 FR 74786, Dec. 24, 2003]

§ 635.33 Archival tags.

(a) *Implantation report.* Any person affixing or implanting an archival tag into a regulated species must obtain written authorization from NMFS pursuant to § 635.32. Persons so authorized to conduct archival tag implantation must provide a written report to NMFS at an address designated by NMFS, indicating the type and number of tags, the species and approximate size of the fish as well as any additional information requested in the authorization.

(b) *Landing.* Notwithstanding other provisions of this part, persons may catch, possess, retain, and land an Atlantic HMS in which an archival tag has been implanted or affixed, provided such persons comply with the requirements of paragraph (c) of this section.

(c) *Landing report.* Persons that retain an Atlantic HMS that has an archival tag must contact NMFS, prior to or at the time of landing; furnish all requested information regarding the location and method of capture; and, as instructed, remove the archival tag and return it to NMFS or make the fish available for inspection and recovery of the tag by a NMFS scientist, enforcement agent, or other person designated in writing by NMFS.

(d) *Quota monitoring.* If an Atlantic HMS landed under the authority of paragraph (b) of this section is subject to a quota, the fish will be counted against the applicable quota for the species consistent with the fishing gear and activity which resulted in the catch. In the event such fishing gear or activity is otherwise prohibited under applicable provisions of this part, the fish shall be counted against the reserve quota established for that species.

§ 635.34 Adjustment of management measures.

(a) NMFS may adjust the catch limits for BFT, as specified in § 635.23, and the quotas for BFT, shark, and swordfish, as specified in § 635.27.

(b) In accordance with the framework procedures in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfishes, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield levels based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions or regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restrictions; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

(c) NMFS may add species to the prohibited shark species group specified in Table 1 of appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, the species is determined to meet at least two of the criteria. Alternatively, NMFS may remove species from the prohibited shark species group and place them in the appropriate shark species group in Table 1 of appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, NMFS determines the species only meets one criterion.

(1) Biological information indicates that the stock warrants protection.

(2) Information indicates that the species is rarely encountered or observed caught in HMS fisheries.

(3) Information indicates that the species is not commonly encountered or observed caught as bycatch in fishing operations for species other than HMS.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

95-354, 99-659, 101-627, 104-297

(a) REQUIRED PROVISIONS.--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are--

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify--

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to,

information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--

(A) participants in the fisheries and fishing communities affected by the plan or amendment; and

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

97-453, 99-659, 101-627, 102-251, 104-297

(b) DISCRETIONARY PROVISIONS.--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to--

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account--

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

16 U.S.C. 1853

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; and

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

Sec. 971d. Administration

- (a) Regulations; cooperation with other parties to Convention; utilization of personnel, services, and facilities for enforcement

The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this chapter, and regulations issued pursuant thereto, except to the extent otherwise provided for in this chapter. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this chapter, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the exclusive economic zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Director of the Office of Personnel Management.

- (b) Primary enforcement responsibility
Enforcement activities at sea under the provisions of this chapter for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.
- (c) Regulations and other measures to carry out Commission recommendations
- (1)
 - (A) Upon favorable action by the Secretary of State under section 971c(a) of this title on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.
 - (B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations

made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

- (C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

- (2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.

- (3) The regulations required to be promulgated under paragraph (1) of this subsection may -
 - (A) select for regulation one or more of the species covered by the Convention;
 - (B) divide the Convention waters into areas;
 - (C) establish one or more open or closed seasons as to each such area;
 - (D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;
 - (E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;
 - (F) require records of operations to be kept by any master or other person in charge of any fishing vessel;
 - (G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this chapter;
 - (H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the

Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section;

- (I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;
 - (J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and
 - (K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention; except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to the United States agreed to pursuant to a recommendation of the Commission.
- (4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit -
 - (A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and
 - (B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.
 - (5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation

by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

- (6) Identification and notification. -
 - (A) Not later than July 1, 1996, and annually thereafter, the Secretary, in consultation with the Secretary of State, the Commissioners, and the advisory committee, shall -
 - (i) identify those nations whose fishing vessels are fishing, or have fished during the preceding calendar year, within the convention area in a manner or under circumstances that diminish the effectiveness of a conservation recommendation;
 - (ii) notify the President and the nation so identified, including an explanation of the reasons therefor; and
 - (iii) publish a list of those Nations identified under clause
 - () notify the President and the nation so identified,
 - (B) In identifying those Nations, the Secretary shall consider, based on the best available information, whether those Nations have measures in place for reporting, monitoring, and enforcement, and whether those measures diminish the effectiveness of any conservation recommendation.
 - (7) Consultation. - Not later than 30 days after a Nation is notified under paragraph (6), the President may enter into consultations with the Government of that Nation for the purpose of obtaining an agreement that will -
 - (A) effect the immediate termination and prevent the resumption of any fishing operation by vessels of that Nation within the Convention area which is conducted in a manner or under circumstances that diminish the effectiveness of the conservation recommendation;
 - (B) when practicable, require actions by that Nation, or vessels of that Nation, to mitigate the negative impacts of fishing operations on the effectiveness of the conservation recommendation involved, including but not limited to, the imposition of subsequent-year deductions for quota overages; and
 - (C) result in the establishment, if necessary, by such Nation of reporting, monitoring, and enforcement measures that are adequate to ensure the effectiveness of conservation recommendations.
- (d) Recommended Commission actions regarding large-scale driftnet fishing and conservation of Atlantic swordfish
 - (1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of

- State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section 3(16) [11] of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(16))) in the Convention area.
- (2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 3 months after each annual meeting of the Commission, shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.
-

Sec. 971e. Violations

- (a) In general

It shall be unlawful -

- (1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 971d of this title; or
- (2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section 971d of this title, without regard to the citizenship of the person or vessel which took the fish.

- (b) Failure to furnish returns, records, or reports

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished by such master or person.

- (c) Refusal of request to board and inspect vessel

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this chapter and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this chapter, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

- (d) Importation of ineligible species or species under investigation

It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 971d(c) or (d) (FOOTNOTE 1) of this title, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 971d(c) or (d) [1] of this title. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Proposed Information Collection; Comment Request; Highly Migratory Species Scientific Research Permits, Exempted Fishing Permits, and Letters of Authorization**

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 31, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Heather Stirratt, National Marine Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 or (301) 713-2347.

SUPPLEMENTARY INFORMATION:**I. Abstract**

The information requested will be used in support of the National Marine Fisheries Service's (NMFS) issuing Scientific Research Permits (SRP), Exempted Fishing Permits (EFP), and Letters of Authorization (LOA) regarding highly migratory species (HMS). This information will also enhance and facilitate NMFS' compliance enforcement capabilities regarding HMS scientific research and exempted fishing activities. In addition, the information will assist with future stock assessments.

II. Method of Collection

Information is submitted on forms or other written format, and may be submitted electronically by e-mail.

III. Data

OMB Number: 0648-0471.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations; individuals or households; not-for-profit institutions; State, local, and tribal government.

Estimated Number of Respondents: 45.

Estimated Time per Response: 2 hours for a scientific research plan; 40 minutes for an application for an EFP, display, SRP, chartering permit, or LOA for Highly Migratory Species; 1 hour for an interim report; 30 minutes for an annual fishing report; 15 minutes for an application for an amendment to an EFP; 5 minutes for notification of departure phone calls to NMFS Enforcement; 2 minutes for "no-catch" reports; and 2 minutes for tag applications.

Estimated Total Annual Burden Hours: 169.

Estimated Total Annual Cost to Public: \$68.45.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 25, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-17284 Filed 8-30-05; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Proposed Information Collection; Comment Request; Application Form for Membership on a National Marine Sanctuary Advisory Council**

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 31, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Karen M. Brubeck, 206-842-6084 or Karen.brubeck@noaa.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

Section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) allows the Secretary of Commerce to establish one or more advisory councils to provide advice to the Secretary regarding the designation and management of national marine sanctuaries. The councils are individually chartered for each sanctuary to meet the needs of the sanctuary. Once a council has been chartered, the sanctuary manager starts a process to recruit members for that Council by providing notice to the public and asking interested parties to apply for the available seats.

II. Method of Collection

An application form and guidelines for a narrative submission must be submitted to the sanctuary manager. Submissions may be made electronically.

III. Data

OMB Number: 0648-0397.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 500 hours.

Estimated Total Annual Cost to Public: \$0.