

Dated: November 21, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

**PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

1. The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.120, paragraph (a)(1) is revised to read as follows:

**§ 216.120 Specified activity and specified geographical region.**

(a) \* \* \*

(1) Launching up to 30 space and missiles vehicles each year from Vandenberg Air Force Base, for a total of up to 150 missiles and rockets over the 5-year authorization period.

\* \* \* \* \*

3. Section 216.121 is revised to read as follows:

**§ 216.121 Effective dates.**

Regulations in this subpart are effective from January 1, 2004, through December 31, 2008.

4. In 216.123, paragraph (c) and (d) are revised as follows:

**§ 216.123 Prohibitions.**

\* \* \* \* \*

(c) No person in connection with the activities described in § 216.120 shall:

(1) Take any marine mammal not specified in § 216.120(b);

(2) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;

(3) Take a marine mammal specified in § 216.120(b) if such take results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under § 216.106.

5. In § 216.124, paragraphs (a)(1)–(3) are revised to read as follows:

**§ 216.124 Mitigation.**

(a) \* \* \*

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require

approaching pinniped rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons, March through June.

\* \* \* \* \*

6. In § 216.125, paragraphs (b) introductory text, (b)(2)–(b)(5) and (e) are revised and paragraphs (b)(6) and (b)(7) are added to read as follows:

**§ 216.125 Requirements for monitoring and reporting.**

\* \* \* \* \*

(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, as specified in the Letter of Authorization, to:

\* \* \* \* \*

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals,

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf could occur in those areas (this determination will be made in consultation with the National Marine Fisheries Service),

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season,

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental

conditions such as tide, wind speed, air temperature, and swell.

\* \* \* \* \*

(e) An annual report must be submitted at the time of renewal of the LOA, described in § 216.127

\* \* \* \* \*

7. Section 216.127 is revised to read as follows:

**§ 216.127 Renewal of Letters of Authorization.**

A Letter of Authorization issued under § 216.126 for the activity identified in § 216.120(a) will be renewed annually upon:

(a) Timely receipt of the reports required under § 216.125(d), if determined by the Assistant Administrator to be acceptable; and

(b) A determination that the mitigation measures required under § 216.124 and the Letter of Authorization have been undertaken.

8. Section 216.128 is revised to read as follows:

**§ 216.128 Modifications of Letters of Authorization.**

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.120 (b), a Letter of Authorization may be substantively modified without prior notice and opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 600 and 697**

[I.D. 110102A]

**Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coast Weakfish Fishery; Exempted Fishing Permits (EFPs)**

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

**ACTION:** Notice of intent to issue EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** NMFS announces that the Director, Office of Sustainable Fisheries, NMFS (Director) has received EFP applications from the State of North Carolina to continue work on the first year of a 2-year EFP issued in 2003. The State of North Carolina originally proposed conducting an experimental characterization study using flynets to fish for weakfish in a closed area of the exclusive economic zone (EEZ) south of Cape Hatteras, during 2003 and 2004. Study goals, however, were not met in that first year in 2003 due to poor weather conditions and insufficient availability of fish. Accordingly, the State of North Carolina has requested that they again be given 2 years to complete the study and that the study period be revised to cover the years 2004 and 2005.

**DATES:** Written comments on the applications must be received on or before December 18, 2003.

**ADDRESSES:** Send comments to John H. Dunnigan, Director, Office of Sustainable Fisheries (F/SF), NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. The applications, related documents, including the draft EA, and copies of the regulations under which EFPs are issued may also be requested from this address.

**FOR FURTHER INFORMATION CONTACT:** Anne Lange 301-713-2334; FAX: 301-713-0596.

**SUPPLEMENTARY INFORMATION:** The Director has made a preliminary determination that the EFP applications contain all the required information; that the activities to be authorized under the EFP would be consistent with the goals and objectives of the Atlantic weakfish fishery under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act); and that the applications warrant further consideration. This document requests public input in the form of written comments to NMFS relative to the issuance of EFPs to the State of North Carolina. If granted, these EFPs would authorize a flynet characterization study to be conducted by the North Carolina Division of Marine Fisheries (NCDMF) in a closed area south of Cape Hatteras. Two participating flynet vessels, each with its own EFP and observer aboard, would conduct up to a total of 18 trips per year over each of two seasons, from 15 January through 1 April, in 2004 and

2005, south of Cape Hatteras, for a maximum of 36 trips.

The NCDMF has presently applied for two EFPs in 2004 to conduct the first year of a 2-year characterization study in the closed area in the EEZ south of Cape Hatteras, North Carolina. The NCDMF previously applied, and was granted by NOAA Fisheries, two identical EFPs for 2003 to perform an identical study, but due to inclement weather and insufficient availability of fish, NCDMF was unable to conduct year one of their study in 2003. Hence, NCDMF is reapplying to again begin their study, but in 2004. The previous NCDMF application also sought, and was granted by NOAA Fisheries, a third EFP to test turtle excluder devices (TEDs) in the closed area. Unlike the work involved in the characterization study, NCDMF was able to conclude its testing of TEDs, and is presently analyzing the data gained. Accordingly NCDMF does not presently seek a third EFP, as it did last year, for TED testing.

NOAA Fisheries has authority to grant the requested EFPs under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5101 *et seq.*, and regulations at 50 CFR 697.22 concerning the conduct of activities that are otherwise prohibited by the regulations in this part. The prohibited activities for which NCDMF seeks exemption involve weakfish regulations at 50 CFR 697.7(a)(5) that prohibit any person from fishing with a flynet in the Exclusive Economic Zone (EEZ) off North Carolina in a closed area south of Cape Hatteras, as defined by this regulation. This area was closed to flynetters in order to reduce the harvest of the recovering weakfish stock, especially the harvest of juvenile weakfish known to congregate in the closed area. In addition, other prohibitions for which exemption is sought are at 50 CFR 697.7(a)(1) and (2), which prohibits fishing for, harvesting, possessing, or retaining weakfish less than 12 inches (30.5 cm), in the EEZ and at 50 CFR 697.7(a)(3), which prohibits fishing for weakfish coastwide in the EEZ with a minimum mesh size less than 3 1/4-inch (8.3 cm) square stretched mesh (as measured between the centers of opposite knots when stretched taut) or 3 3/4-inch (9.5 cm) diamond stretched mesh for trawls.

#### Previous Year's EFP

The present application by NCDMF for two EFPs to begin a characterization study is identical to the application for EFPs sought last year by NCDMF to perform this same study. Last year, on December 18, 2002, NMFS issued two

EFPs to NCDMF to conduct a flynet characterization study, in cooperation with NMFS, with two flynet vessels using mesh at least as large as defined in the Atlantic States Marine Fisheries Commission's (Commission) Weakfish Fishery Management Plan Amendment 3 (Amendment 3), and at 50 CFR 697.7(a)(3), to collect information on the size and species composition of finfish caught in modified flynets in the closed area. Under last year's EFPs, the NCDMF was to assess the effects, including the species and size composition of the catch, of using larger mesh size nets in the North Carolina flynet fishery if it were to be allowed to resume operations south of Cape Hatteras. The mesh size used in the flynet fishery, prior to the 1997 closure of this area, was significantly smaller than is currently required. This information would have permitted NCDMF, the Commission, and NMFS to properly assess the potential impacts of reopening the closed area to flynets with larger minimum-mesh sizes after management goals have been met and the stock is declared to be restored. Additional terms of the study proposal related to sample design or address concerns raised by the Commission's Weakfish Fishery Management Board and its Technical Committee. The study was to terminate if any cumulative, monthly sample yields juvenile or undersized fish in excess of 10 percent of the total catch for that month. If an annual cap of 175,000 lbs (79,380 kg) on landings of weakfish taken south of Cape Hatteras is reached, the study would end for that year. Multiple tows made on a single trip were to be spatially separated by at least one (1) nautical mile to insure maximum geographic coverage and prevent directing effort on one specific school of fish. The entire contents of each tow on an individual trip were to be kept separate and processed separately at the dock. NMFS observers were to be required on each trip to monitor fishing activity and to record global positioning system coordinates for each tow, interactions with any threatened or endangered species, tow time, depth, water temperature, air temperature, date, and time. NMFS observers were to also record net dimensions and design specifications to document successful designs, if a net was found to effectively avoid catches of undersized fish. In order to determine the ability of these flynets to minimize bycatch of undersized fish, uncultured catches were to be sorted by tow for species composition and weight by market category, and sub-samples would be

measured for length frequency. Regulatory discards, including sub-legal weakfish, and non-marketable species, were to be sorted, weighed and a sub-sample would be taken for length frequency. These fish were to be properly disposed of, and would not be sold. ESA and other protected species would have been handled as required by law; observers would have recorded and reported all discarded red drum and striped bass. The flynet characterization was to be terminated if takes (lethal or non-lethal) of loggerhead or Kemp's ridley sea turtles exceeded one half of the numbers (20 and 2) allowed in the Incidental Take Statement of the 1997 BO (that is, 10 or 1, in any one year). Further, analysis of the study data was to be coordinated by NCDMF and NMFS staff and the Commission was to be briefed through annual and final reports that would provide maps of the sample areas overlaid with the location of each tow, species encountered, total weights, numbers, and length frequency distributions of selected species. The final report was also to summarize the findings from each year and attempt to relate variability in catches and species composition with environmental variables. The report was also to summarize all interactions with sea turtles and include a discussion on the use of TEDs in the flynet fishery.

#### Newly Proposed EFP

Unfortunately, due to poor weather and insufficient availability of fish, NCDMF was unable to complete its year one experiments in the 2-year study. Accordingly, NCDMF seeks to reapply for EFPs to conduct an identical two year characterization study under identical terms, this time for the 2004 and 2005 years. Specifically, the NCDMF proposes to complete the first year of the 2-year flynet characterization study using the same means and methods as described above for last year's EFP. The flynet characterization study would be conducted in a closed area south of Cape Hatteras by two participating flynet vessels, each with its own EFP and observer aboard, conducting up to a total of 18 trips per year over each of two seasons, from 15 January through 1 April, in 2004 and 2005, for a maximum of 36 trips.

The EFP would exempt up to three vessels from the requirements of the Atlantic weakfish regulations according to the provisions at 50 CFR 600.745 and 697.22, as follows: (1) prohibiting of the use of flynets in the closed area of the EEZ off North Carolina as defined at § 697.7(a)(5); and (2) fishing for, harvesting, possession or retention of any weakfish less than 12 inches (30.5

cm) in total length from the EEZ as specified at § 697.7(a)(1) and (2) for data collection purposes.

The environmental assessment prepared for the proposed flynet characterization study in 2003 found that no significant environmental impacts would result from the proposed action.

Dated: November 26, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 031125290-3290-01; I.D. 111203D]

RIN 0648-AQ97

#### Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes a regulation to implement the annual harvest guideline for Pacific sardine in the U.S. exclusive economic zone off the Pacific coast for the fishing season January 1, 2004, through December 31, 2004. This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

**DATES:** Comments must be received by December 17, 2003.

**ADDRESSES:** Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. The report *Stock Assessment of Pacific Sardine with Management Recommendations for 2004* may be obtained at this same address. An environmental assessment/regulatory impact review/initial regulatory flexibility analysis (IRFA) for this proposed rule may be obtained at this same address.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Southwest Region, NMFS, 562-980-4040.

**SUPPLEMENTARY INFORMATION:** The FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee

(SSC). The Council reviews reports from the Team, Subpanel, and SSC, and then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure are published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific sardine season begins on January 1 and ends on December 31 of each year.

The Team meeting took place at the Southwest Fisheries Science Center in La Jolla, CA on October 14, 2003. A public meeting between the Team and the Subpanel was held at the same location that afternoon. The Council reviewed the report at its November meeting in Del Mar, CA and heard comments from its advisory bodies and the public.

Public comments are requested on how the fishery might be conducted for the 2004 fishing season to achieve but not exceed the harvest guideline while minimizing impacts on the harvest of other CPS.

In view of the above, the following would be implemented for the January 1 through December 31, 2004, fishing season.

Based on a biomass estimate of 1,090,587 metric tons (mt)(in U.S. and Mexican waters), using the FMP formula, the harvest guideline for