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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA799

Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, and Chartering Permits; Letters of Acknowledgment

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

ACTION: Notice of intent; request for comments.

SUMMARY: NMFS announces its intent to issue Exempted Fishing Permits (EFPs), Scientific Research Permits (SRPs), Display Permits, Letters of Acknowledgment (LOAs), and Chartering Permits for the collection of Atlantic Highly Migratory Species (HMS) in 2012. In general, EFPs and related permits would authorize collection of a limited number of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection and public display. Chartering Permits allow the collection of HMS on the high seas or in the Exclusive Economic Zone of other nations. Generally, these permits will be valid from the date of issuance through December 31, 2012, unless otherwise specified, subject to the terms and conditions of individual permits.

DATES: Written comments on these activities received in response to this notice will be considered by NMFS when issuing EFPs and related permits and must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

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

- Email: HMSEFP.2012@noaa.gov. Include in the subject line the following identifier: 0648-XA799.
- Mail: Craig Cockrell, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: (301) 713-1917.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, phone: (301) 427-8503, fax: (301) 713-1917, or Jackie Wilson at (240) 338-3936.

SUPPLEMENTARY INFORMATION: Issuance of EFPs and related permits are necessary for the collection of HMS for public display and scientific research that is exempt from regulations (e.g., seasons, prohibited species, authorized gear, and minimum sizes) that may prohibit the collection of live animals or biological samples. Collection for scientific research and display represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the quota of the species harvested. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

EFPs and related permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. § 1801 et seq.) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. § 971 et seq.). Regulations at 600.745 and 635.32 govern scientific research activity, exempted fishing, chartering arrangements, and exempted educational activities with respect to Atlantic HMS. Since the Magnuson-Stevens Act does not consider scientific

research to be “fishing,” scientific research is exempt from this statute, and NMFS does not issue EFPs for bona fide research activities (e.g., research conducted from a research vessel and not a commercial or recreational fishing vessel) involving species that are only regulated under the Magnuson-Stevens Act (e.g., most species of sharks) and not under ATCA. NMFS requests copies of scientific research plans for these activities and indicates concurrence by issuing an LOA to researchers to indicate that the proposed activity meets the definition of research and is therefore exempt from regulation. Examples of research conducted under LOAs include tagging and releasing of sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark species, and collecting and sampling sharks caught during trawl surveys for life history studies.

Scientific research is not exempt from regulation under ATCA. NMFS issues SRPs for collection of species managed under this statute (e.g., tunas, swordfish, billfish, and some species of sharks), which authorize researchers to collect HMS from bona fide research vessels. One example of research conducted under SRPs consists of scientific surveys of HMS conducted from the NOAA research vessels. EFPs are issued to researchers collecting ATCA-managed species and conducting research from commercial or recreational fishing vessels. NMFS regulations concerning the implantation or attachment of archival tags in Atlantic HMS require scientists to report their activities associated with these tags. Examples of research conducted under EFPs include deploying pop-up satellite archival tags on billfish, sharks, and tunas to determine migration patterns of these species; conducting billfish larval tows to determine billfish

habitat use, life history, and population structure; and determining catch rates and gear characteristics of the swordfish buoy gear fishery.

NMFS is also seeking public comment on its intent to issue Display Permits for the collection of sharks and other HMS for public display in 2011. Collection of sharks and other HMS sought for public display in aquaria often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species, and collection of fish below the minimum size for recreational permit holders. NMFS established a 60-metric ton (mt) whole weight (ww) (approximately 3,000 sharks) quota for the public display and research of sharks (combined) in the final Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). Collections of animals in both state and federal waters are deducted from this quota. The quotas available for scientific research and public display of sandbar and dusky sharks were modified in Amendment 2 to the 2006 Consolidated HMS FMP (June 24, 2008, 73 FR 35778; corrected on July 15, 2008 73 FR 40658) in light of the results of recent stock assessments. The public display and scientific research quotas for sandbar sharks are now limited to 2.78 mt ww (2 mt dressed weight (dw)): 1.39 mt ww for public display and 1.39 mt ww for scientific research. Furthermore, Amendment 2 to the 2006 Consolidated HMS FMP limited dusky shark collection to bona fide scientific research and prohibits dusky shark collection for public display. The rule did not modify the overall 60-mt ww quota; rather, it adjusted the proportion of the quota allocated to sandbar and dusky sharks. These quotas have been analyzed in conjunction with other sources of mortality under Amendment 2 to the 2006 Consolidated HMS FMP, and NMFS has determined that harvesting this amount for public display will not have a

significant impact on the stocks. The number of sharks harvested for display and research has remained under the annual 60-mt ww quota every year since establishment of the quota. In 2010, approximately 69 percent of the sharks authorized for public display and scientific research purposes were actually harvested or discarded dead. Amendment 3 to the 2006 Consolidated HMS FMP also established a separate set-aside quota for smoothhound sharks (i.e., smooth dogfish and Florida smoothhounds) taken for research purposes, which would be in addition to the overall 60-mt ww quota for the public display and research of all sharks. However, the smoothhound shark research set-aside quota is not yet effective and their harvest resulting from research activities is not yet deducted from the set aside quota for public display and research of sharks. NMFS will announce when such regulations become effective through a publication in the Federal Register.

Exempted fishing permits will continue to be considered for issuance in 2012, for bycatch reduction research in closed areas of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea to test gear modifications and fishing techniques aimed to avoid incidental capture of non-target species. In addition to this opportunity for public comment, the HMS Management Division will seek additional public comment, as necessary, on specific proposals where research is not being conducted solely from bona fide research vessels or fishing vessels specifically contracted to conduct scientific research. NMFS generally does not consider recreational or commercial vessels bona fide research vessels. However, if the vessels have been contracted to only conduct research and not participate in any commercial or recreational fishing activities during that research, NMFS may consider those vessels as bona fide research platforms while conducting the specified

research. As an example, NMFS has considered the recreational and commercial vessels contracted to conduct research under the Deepwater Horizon/BP oil spill as bona fide research platforms. Furthermore, NMFS will provide the public with additional opportunities for comment, as necessary and appropriate, if research could allow commercial fishing vessels to conduct limited fishing trips inside closed areas in conjunction with specified research.

The HMS Management Division is also requesting comments on chartering permits considered for issuance in 2012 to U.S. vessels fishing for HMS while operating under chartering arrangements. In 2011 there were no chartering permits issued to U.S. fishing vessels. A chartering arrangement is a contract or agreement between a U.S. vessel owner and a foreign entity by which the control, use, or services of a vessel are secured for a period of time for fishing for Atlantic HMS. Before fishing under a chartering arrangement, the owner of the U.S. fishing vessel must apply for a Chartering Permit. The vessel chartering regulations can be found at 635.5(a)(4) and 635.32 (e).

In addition, Amendment 2 to the 2006 Consolidated HMS FMP implemented a shark research fishery. This research fishery is conducted under the auspices of the exempted fishing program. Research fishery permit holders assist NMFS in collecting valuable shark life history data and data for future shark stock assessments. Fishermen must fill out an application for a shark research permit under the exempted fishing program to participate in the shark research fishery. Shark research fishery participants are subject to 100-percent observer coverage in addition to other terms and conditions. A Federal Register notice describing the objectives for the shark research fishery in 2012 published on October 31, 2011 (76 FR 67149).

The authorized number of species for 2011, as well as the number of specimens collected in 2010, is summarized in Table 1. The number of specimens collected in 2011 will be available when all 2011 interim and annual reports are submitted to NMFS. In 2010, the number of specimens collected was less than the number of authorized specimens for most permit types, with the exception of the number of larvae collected under billfish EFPs, and sharks taken under SRPs and Display permits. It is difficult to control the quantity of larvae that may be caught when sampling fish larvae. However, the impacts of these collections on fish populations are not expected to be significant given the high level of natural mortality of fish larvae. As for sharks taken under SRPs and Display Permits, 374 of the sharks taken were Atlantic sharpnose sharks collected during trips using longline gear; it is also difficult to control the number and species of animals caught when using this gear type. However, as Atlantic sharpnose sharks were not found to be overfished nor have overfishing occurring during its most recent stock assessment in 2007, these collections are not expected to have any impacts on Atlantic sharpnose populations.

In all cases, mortality associated with an EFP, SRP, Display Permit, or LOA (except for larvae) is counted against the appropriate quota. NMFS issued a total of 28 EFPs, SRPs, Display Permits, and LOAs in 2010 for the collection of HMS. As of October 31, 2011, NMFS has issued a total of 32 EFPs, SRPs, Display Permits, and LOAs. These do not include permits that were issued for research related to the Deepwater Horizon/BP oil spill in the Gulf of Mexico. In 2011, seven permits were issued for research related to the oil spill in the Gulf of Mexico.

Table 1. Summary of HMS Exempted Permits Issued in 2010 and 2011. “HMS” refers to multiple species being collected under a given permit type.

	2010					2011		
Permit Type	Permits Issued**	Authorized Fish (Num)	Authorized Larvae (Num)	Fish Kept/Discarded Dead (Num)	Larvae Kept (Num)	Permits Issued**	Authorized Fish (Num)	Authorized Larvae (Num)
EFP								
HMS	1	454	0	0	0	2	273	0
Shark	9	755	0	607	0	8	1,377	0
Tuna	5	295	0	67	0	5	695	0
Billfish	2	0	1,000	0	2,327	2	40	1,000
SRP								
HMS	0	0	0	0	0	1	83	0
Shark	1	140	0	345†	0	3	1,365	0
Tuna	0	0	0	0	0	1	110	0
Display								
HMS	2	153	0	1	0	2	124	0
Shark	2	107	0	113†	0	3	87	0
Total	22	1,904	1,000	1,133	2,327	27	4,154	1,000
LOA*								
Shark	6	4,140	0	2,000	0	5	5,367	0

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

**2010 & 2011 permits issued listed in Table 1 do not include permits issued solely for research related to the Deepwater Horizon/BP oil spill research in the Gulf of Mexico.

†All additional collections above the authorized levels were due to incidentally caught Atlantic sharpnose sharks.

Final decisions on the issuance of any EFPs, SRPs, Display Permits, and Chartering Permits will depend on the submission of all required information about the proposed activities, NMFS's review of public comments received on this notice, an applicant's reporting history on past permits issued, past law enforcement violations, consistency with relevant NEPA documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs as assessed in the 1999 FMP and Amendment 2 to the 2006 Consolidated HMS FMP.

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

Dated: November 21, 2011.

Steven Thur,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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