

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 09/26/2011

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Simon Szykman
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 07/25/2011

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 201107-0648-006
AGENCY ICR TRACKING NUMBER:
TITLE: Implantation and Recovery of Archival Tags
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0338

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 09/30/2014

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	35	21	50
New	65	47	0
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	30	26	-50
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Implantation of Archival Tags - Notification and Report	NA, NA, NA	Exempted fishing permit application form, Interim Reporting Form, Annual reporting form	50 CFR 635
Tag Recovery			50 CFR 635.33

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.

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

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
IMPLANTATION AND RECOVERY OF ARCHIVAL TAGS
OMB CONTROL NO. 0648-0338**

A. JUSTIFICATION

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

The purpose of the collection of this information is to help comply with the [Atlantic Tunas Convention Act of 1975](#) (ATCA, 16 U.S.C. 971), the [Magnuson-Stevens Fisheries Conservation and Management Act](#) (Magnuson-Stevens Act, 16 U.S.C. 1812), and Federal regulations at [50 CFR § 635](#). ATCA authorizes the promulgation of regulations to implement recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and collect information to support these recommendations. Atlantic Highly Migratory Species (HMS), such as tuna, shark, swordfish, and billfish, are also managed under the authority of the Magnuson-Stevens Act, which gives National Marine Fisheries Service (NMFS) the authority to conduct and promote fisheries research, and requires that the United States (U.S.) cooperate with those international organizations involved in the conservation of HMS.

As a member of ICCAT, the U.S. takes part in the collection of HMS biological statistics for research purposes. The collection of information through the U.S. HMS archival tagging program provides essential stock assessment information for international and domestic fishery management. The tagging program has provided and continues to provide vital information regarding the movement and life history of bluefin tuna and billfish.

Archival tags are miniature data loggers that record the movements, geolocation, and behavior of individually tagged highly migratory species. The tags are returned to the agency by fishermen after a tagged fish is captured in a commercial or recreational fishery. Data from recovered tags is used to ascertain HMS life history information such as migratory patterns and spawning site fidelity. This information is vital for international and U.S. management of HMS fisheries. For example, data obtained from this tagging program is valuable for research related to bluefin tuna stock composition, movements, and identification of western bluefin tuna spawning areas. Bluefin management has been based on a two stock hypothesis (with spawning occurring in two discrete locations in the Mediterranean and Gulf of Mexico); however, additional information collected through tags may help provide a better understanding of migratory patterns and spawning site fidelity for bluefin tuna. Data from the archival tagging program will continue to be useful for scientists and managers concerned with bluefin tuna.

This extension request covers two reporting requirements associated with the archival tag program. Current regulations (50 CFR§635.33) allow fishermen to retain any HMS with an archival tag implanted or attached without regard to season or size limits, under the condition that the fisherman report the landing along with certain information about the catch, and make the fish available to NMFS for recovery of the tag.

Regulations also require that researchers using archival tags for Atlantic tunas, swordfish, or billfish submit an application for an Exempted Fishing Permit (EFP) or Scientific Research Permit (SRP) that provides details concerning the research objectives, the type and number of tags used, the species and approximate size of the tagged fish, and the location and method of capture of the tagged fish. Receipt of an EFP or SRP confers Agency authorization of the research activity and requires scientists to submit interim and annual reports that provide additional information on tagged fish, among other requirements.

2. Explain how, by whom, how frequently, and for what purpose the information will be used.

As described above, there are two sets of reporting requirements. The information provided by HMS fishermen will include the archival tag, location of capture, and captured fish. This information will be used to analyze fish movements to better understand the life history of the tagged fish.

The information provided by researchers will include notification of project initiation, goals of the research, and a summary of project results. This information is needed to assist the agency in assessing the effectiveness of archival tag research and the impact of regulatory allowances for tag recovery, and to ensure that archival tag research does not lead to undue mortality.

It is anticipated that the information collected will be disseminated to the public directly or used to support publicly disseminated information such as stock assessments or peer-reviewed scientific literature. As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with Agency standards for confidentiality, privacy, and electronic information. See response to Question 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. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to [Section 515 of Public Law 106-55](#).

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.

Archival tags have been specifically designed for use on fish, sea turtles, and marine mammals. The archival tag stores environmental and behavioral data. Software provides graphical representation of all the data. Tags currently on the market weigh 25g in air, have up to one megabyte of memory, can retain data for 20 years, and have a lifetime of four to five years. Archival tag information can be reported to the Southeast Fisheries Science Center by calling a toll-free number (800) 437-3936, or by contacting: National Marine Fisheries Service, Highly Migratory Species, 1315 East West Highway, Silver Spring, MD 20910. Scientists' notification and reporting forms, downloadable and fillable, are available at http://www.nmfs.noaa.gov/sfa/hms/Linkpages/reporting_forms.htm and may be submitted via email to: eric.orbesen@noaa.gov.

4. Describe efforts to identify duplication.

Reports submitted to NMFS from researchers planning an archival tagging program for HMS will provide for coordination of tagging programs in order to ensure that duplication of tagging programs is minimized. Given the expense of this research, relatively few parties will be involved and a high level of coordination with the researchers will be maintained, which will provide an avenue to avoid any duplication of reporting requirements within NOAA. Other reporting within NOAA that could be required of researchers includes grant reports (if a NOAA grant is issued) or interim and final exempted fishing permit reports. If these other reports contain the necessary information and are available in the timeframe required under 50 CFR ' 635.33, they may be submitted to satisfy the reporting requirements approved under this collection.

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

There will be no significant impact on small businesses or entities.

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

The tagging program could not be conducted without the reporting requirements, since collecting tag returns is an integral part of a tagging program. If the tagging program were not conducted, domestic and international management of HMS would be compromised, and could be rendered ineffective because of the lack of necessary life history information.

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

The collection is consistent with the guidelines.

8. Provide information on 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 published on January 26, 2011 (76 FR 4634) solicited public comment on this renewal. No comments were received.

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

A \$500 reward is offered by NOAA for recovery of one of their archival tags. Rewards will not be provided for non-NOAA archival tags that are retrieved. Given the high cost of each tag and tag deployment, a reward to encourage recovery of the tags is warranted. Rewards in conventional tagging programs are common and have been found to enhance recovery numbers. The high value of an individual giant tuna on the export market (thousands of dollars) also calls for a reward as an incentive for reporting and providing the fish for sampling. Finally, tags may be recovered by fishermen outside the waters of the United States in the eastern Atlantic or the Mediterranean Sea, and a reward increases the likelihood that they will report.

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

As stated on the forms, information submitted will be treated as confidential under the provisions of the Magnuson-Stevens Fishery Management and Conservation Act and [NOAA Administrative Order 216-100](#).

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 sensitive questions are asked.

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

Approximately 25 tags are recovered and reported per year. The estimated time for reporting on the fish is 30 minutes, which includes the time for making a toll-free call, making arrangements for the fish to be examined by a fishery biologist or to remove the tag, and processing fish samples as instructed. The burden for tag recovery is therefore:

$$25 \text{ respondents} \times 1 \text{ response} \times 30 \text{ minutes} = 12.5 \text{ (13) hours}$$

The total number of persons implanting archival tags is estimated at 10 researchers, each providing a written notification (EFP application) and a three written reports (two interim reports and one annual report).

$$10 \text{ respondents} \times 1 \text{ notification} \times 40 \text{ minutes/notification} = 6.7 \text{ (7) hours}$$

$$10 \text{ respondents} \times 2 \text{ interim reports} \times 1 \text{ hour/report} = 20 \text{ hours}$$

$$10 \text{ respondents} \times 1 \text{ annual report} \times 40 \text{ minutes/report} = 6.7 \text{ (7) hours}$$

Collection totals are 35 respondents, 65 responses, and 47 hours.

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 Question 12 above.

There are no costs for those recovering tags because the phone call is toll-free, NMFS pays for postage for returning the tag, and a reward is given. Researchers implanting archival tags are not required to pay for paper and postage costs associated with submitting notifications and reports because these can be submitted electronically.

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

The cost of the NOAA Archival Tagging Program is approximately \$1 million in research grants over a 3-year period. About 75 tags (25 per year) will be returned over the 3 years, with a reward of \$500 a tag, for a cost of \$37,500. The total Federal cost for 3 years is therefore approximately \$1,037,500, or \$345,833 a year. The Federal government is not responsible for costs associated with research involving deployment of archival tags being conducted by universities or other entities.

15. Explain the reasons for any program changes or adjustments.

Adjustments:

The changes in total annual burden hours are adjustments reflecting a re-estimation of the numbers of respondents and responses.

Due to the scientists all now emailing their reports, there are no more postage costs.

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

The data obtained may be used in reports and articles, which may be published.

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.

Not Applicable.

18. Explain each exception to the certification statement.

No exceptions are requested.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection will not employ statistical methods.

FEDERAL ATLANTIC HMS EXEMPTED FISHING REQUIREMENTS AND APPLICATION

Applicant's Name: _____

Address: _____ *Phone Number:* _____

_____ *Fax Number:* _____

City _____ *State* _____ *Zip* _____ *Email Address:* _____

Exempted Fishing Program

1) *Purpose/Goals of the Exempted Fishing Activity, include justification for issuance of the EFP¹:*

2) *When will these activities occur (month(s) and year)?*

3) *Where will these activities occur (lat, long, and/or general area description)?²*

¹ Include additional sheets if more room is needed to describe the activities related to this request for an EFP.

² 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.

FEDERAL ATLANTIC HMS EXEMPTED FISHING REQUIREMENTS AND APPLICATION

- 4) *Type, size, and amount of collection gear:*

- 5) *Target Species (species name and number to be retained):*

- 6) *Anticipated Non-Target Species (species name and number to be released or kept?):*

- 7) *Are protected species and marine mammal encounters likely? Please describe when, where, and why? In addition, please describe any potential impacts to essential fish habitat.*

- 8) *Authorized Samplers:*

- 9) *Holding Facility (if for display):*

- 10) *If activities are Federally funded, describe type, amount, and source:*

FEDERAL ATLANTIC HMS EXEMPTED FISHING REQUIREMENTS AND APPLICATION

Vessel Information

*Applications will be deemed incomplete if a signature or vessel documentation is not included
If the applicant's name is different from the owner's name, please fill in the appropriate information*

Participating Vessel(s)³:

1. **Vessel Name** _____ **Owner's Name:** _____

Phone Number: _____ **Owner's Address:** _____

Operator's Name: _____

Vessel Documentation Included? Yes ___ **No**⁴ ___ **Vessel ID #:** _____

2. **Vessel Name** _____ **Owner's Name:** _____

Phone Number: _____ **Owner's Address:** _____

Operator's Name: _____

Vessel Documentation Included? Yes ___ **No** ___ **Vessel ID#:** _____

3. **Vessel Name** _____ **Owner's Name:** _____

Phone Number: _____ **Owner's Address:** _____

Operator's Name: _____

Vessel Documentation Included? Yes ___ **No** ___ **Vessel ID#:** _____

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, sharks, 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: 06/30/2011.

³ Include additional sheets if more than three vessels are needed for the exempted fishing activity or shark research fishery.
⁴ 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, and HMS permit) for each vessel to this application.

FEDERAL ATLANTIC HMS EXEMPTED FISHING REQUIREMENTS AND APPLICATION

Exempted Fishing Program

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 as opposed to 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 0678-0327. Please contact HMS Management Division to request a chartering permit application.

Shark Research Fishery

Regulations governing the issuance of a Federal shark research fishery permit are contained in 50 CFR Part 635. NMFS will publish annually in the Federal Register a notice describing, for the following year, the expected research objectives. In general, shark research fishery permits are issued each year to qualified applicants who have submitted a complete application to NMFS and are selected to participate. The shark research fishery would allow NMFS and commercial shark fishermen to conduct cooperative research to collect fishery-dependent data for management of the Atlantic shark fishery. There is a separate application for the shark research fishery

FEDERAL ATLANTIC HMS EXEMPTED FISHING REQUIREMENTS AND APPLICATION

Requirements

Per the HMS regulations, an EFP, SRP, Display Permit or LOA 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.

An EFP, SRP, Display Permit or LOA is valid only for the specific authorized vessel(s), samplers, time, area, gear, and species indicated on the permit. 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, SRP, Display Permit or LOA 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, SRP, Display Permit or LOA 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 completion of a fishing trip for 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 that is consistent with local state regulations. The interim report (or annual report if the animal is released after 5 days from the completion of a fishing trip) 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.

FEDERAL ATLANTIC HMS EXEMPTED FISHING REQUIREMENTS AND APPLICATION

HMS EFP Contact Information

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

Craig Cockrell
Highly Migratory Species Management Division (F/SF1)
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
NMFS.HMS.EFPS@noaa.gov

For additional HMS EFP information, contact Craig Cockrell at 301-713-2347 or Jackie Wilson at 240-338-3936. Applications may be faxed to 301-713-1917.

Atlantic Shark Research Fishery Contact Information

For additional information regarding the Atlantic shark research fishery, please contact:

Guý DuBeck
Highly Migratory Species Management Division (F/SF1)
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
301-713-2347
Guy.DuBeck@noaa.gov

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, sharks, 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: 06/30/2011.

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: Craig Cockrell, 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						
Pelagic Sharks	Blue						
	Porbeagle						
	Oceanic Whitetip						
	Common Thresher						
	Shortfin Mako						
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: 06/30/2011.

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: Craig Cockrell, 1315 East-West Highway, Silver Spring, MD 20910.

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: Craig Cockrell, 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)	Captive 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 1 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: 06/30/2011.

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: Craig Cockrell, 1315 East-West Highway, Silver Spring, MD 20910.

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*** CURRENT THROUGH P.L. 110-111, APPROVED 11/5/2007 ***

TITLE 16. CONSERVATION
CHAPTER 16A. ATLANTIC TUNAS CONVENTION

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16 USCS § 971d

§ 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 Act [*16 USCS §§ 971 et seq.*], and regulations issued pursuant thereto, except to the extent otherwise provided for in this Act [*16 USCS §§ 971 et seq.*]. 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 Act [*16 USCS §§ 971 et seq.*], 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 Civil Service Commission.

(b) Primary enforcement responsibility. Enforcement activities at sea under the provisions of this Act [*16 USCS §§ 971 et seq.*] 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 5(a) of this Act [*16 USCS § 971c(a)*] 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.*).

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(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 Act [*16 USCS §§ 971 et seq.*];
- (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

16 USCS § 971d

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 (i).

(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) Commission recommendations concerning 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) of the Magnuson-Stevens Fishery Conservation and Management Act) 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.

HISTORY:

(Aug. 5, 1975, P.L. 94-70, § 6, 89 Stat. 387; Nov. 28, 1990, P.L. 101-627, Title II, § 206, 207, 104 Stat. 4461; Nov. 3, 1995, P.L. 104-43, Title III, §§ 303(3), 305, 109 Stat. 384, 385; Nov. 13, 1998, P.L. 105-384, Title II, § 202(b)(1)(C), (F). 112 Stat. 3452, 3453.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"Section 3(16) of the Magnuson-Stevens Fishery Conservation and Management Act" referred to in this section, is section 3(16) of Act April 13, 1976, P.L. 94-265, which formerly appeared as *16 USCS § 1802(16)*, and was redesignated *16 USCS § 1802(17)*.

Explanatory notes:

16 USCS § 971d

The Coast Guard, referred to in this section, is currently operating in the Department of Transportation, pursuant to Act Oct. 15, 1966, P.L. 89-670, 80 Stat. 931.

Amendments:

1990. Act Nov. 28, 1990, in subsec. (c), in para. (1), designated the existing provisions as subpara. (A) and added paras. (B) and (C) and, in para. (3), in subpara. (H), substituted a semicolon for "; and", substituted subpara. (I) for one which read: "impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any recommendation of the Commission.", added new subparas. (J) and (K), and added "except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the Commission."; and substituted subsec. (d) for one which read:

"(1) Notwithstanding section 5(a) and subsection (c) of this section, the recommendations of the Commission concerning bluefin tuna (*Thunnus thynnus thynnus*) which were proposed at the third regular meeting of the Council during the period beginning November 20 and ending November 26, 1974, shall apply with respect to persons and vessels subject to the jurisdiction of the United States immediately upon the taking effect of the regulations required to be promulgated under paragraph (2) of this subsection.

"(2) Not later than the thirtieth day after the date of enactment of this Act, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out the purposes of paragraph (1) of this subsection, including, after consultation with the Secretary of the department in which the Coast Guard is operating, regulations providing procedures and methods of enforcement. Notwithstanding provisions of *section 553 of title 5 of the United States Code*, such regulations may be promulgated without general notice of proposed rulemaking, and such regulations may take effect on the date they are published in the Federal Register. Such regulations shall remain in force and effect with respect to persons and vessels subject to the jurisdiction of the United States until the last date on which recommendations referred to in paragraph (1) can take effect under paragraph (3) of article VIII of the Convention, and if such recommendations do take effect under the Convention with respect to the United States on or before such last date, such regulations shall remain in force and effect, subject to the provisions of the Convention and this Act, for so long as such recommendations are so in effect."

1995. Act Nov. 3, 1995, in subsec. (a), substituted "exclusive economic zone" for "fisheries zone"; and, in subsec. (c), in the heading, inserted "and other measures", in para. (3), in the concluding matter, inserted "or fishing mortality level", and added paras. (6) and (7).

1998. Act Nov. 13, 1998, in subsec. (c), in para. (1)(C), substituted "Magnuson-Stevens Fishery" for "Magnuson Fishery", in para. (6), in subpara. (A)(iii), substituted "clause (i)" for "subparagraph (A)", and designated the concluding matter of such paragraph as subpara. (B); and, in subsec. (d)(1), substituted "Magnuson-Stevens Fishery" for "Magnuson Fishery".

Transfer of functions:

All functions vested by statute in the Civil Service Commission, except as otherwise specified, were transferred to the Director of the Office of Personnel Management, by Reorg. Plan No. 2 of 1978, *43 Fed. Reg. 36037*, 92 Stat. 3784, which appears at *5 USCS § 1101* note. This transfer is effective Jan. 1, 1979, as provided by Ex. Or. No. 12107 of Dec. 28, 1978, § 1-102, *44 Fed. Reg. 1055*, which appears at *5 USCS § 1101* note.

Other provisions:

16 USCS § 971d

Use of aircraft for purposes of Atlantic bluefin tuna fishing. Act Dec. 21, 2000, P.L. 106-553, § 1(a)(2), 114 Stat. 2762 (enacting into law § 634 of Title VI of H.R. 5548 (114 Stat. 2762A-114), as introduced on Oct. 25, 2000), provides:

"None of the funds provided in this or any previous Act, or hereinafter made available to the Department of Commerce shall be available to issue or renew, for any fishing vessel, any general or harpoon category fishing permit for Atlantic bluefin tuna that would allow the vessel--

- "(1) to use an aircraft to locate, or otherwise assist in fishing for, catching, or possessing Atlantic bluefin tuna; or
- "(2) to fish for, catch, or possessing Atlantic bluefin tuna located by the use of an aircraft."

NOTES:

Related Statutes & Rules:

This section is referred to in *16 USCS §§ 971e, 971j*.

Interpretive Notes and Decisions:

Prohibition in appropriations bill against use of federal funds to issue or renew bluefin tuna fishing permits to vessels using spotter aircraft to locate tuna, set out in Act of Dec. 21, 2000, Pub. L. No. 106-553, app. B § 634, 2000 U.S.C.C.A.N. (114 Stat.) 2762, 2762A-114 (§ 634), was limited to fiscal year to which appropriations bill applied in absence of any clear expression of congressional intent to impose permanent ban on use of spotter aircraft. *Atl. Fish Spotters Ass'n v Evans* (2003, CA1 Mass) 321 F3d 220.

Where appropriations bill designated as Act of Dec. 21, 2000, Pub. L. No. 106-553, app. B § 634, 2000 U.S.C.C.A.N. (114 Stat.) 2762, 2762A-114 (§ 634), prohibited use of federal funds to issue or renew bluefin tuna fishing permits to vessels using spotter aircraft to locate tuna, language in bill also prohibiting use of federal funds "hereinafter" made available referred only to funds appropriated by bill, or funds previously made available, and such language could not be construed to mean funds "hereafter" made available; thus, use of word, "hereinafter," did not express congressional intent to impose permanent prohibition. *Atl. Fish Spotters Ass'n v Evans* (2003, CA1 Mass) 321 F3d 220.

16 USCS § 971d(c)(3) did not entitle fishermen under given state's flag to fish to quota, rather it ensured that states did not unilaterally adjust their allotments under International Convention for Conservation of Atlantic Tunas at expense or to benefit of other states. *Blue Water Fishermen's Ass'n v Nat'l Marine Fisheries Serv.* (2002, DC Mass) 226 F Supp 2d 330.

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*** CURRENT THROUGH P.L. 110-111, APPROVED 11/5/2007 ***

TITLE 16. CONSERVATION
CHAPTER 38. FISHERY CONSERVATION AND MANAGEMENT
UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

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16 USCS § 1812

§ 1812. Highly migratory species

(a) In general. The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and shall promote the achievement of optimum yield of such species throughout their range, both within and beyond the exclusive economic zone.

(b) Traditional participation. In managing any fisheries under an international fisheries agreement to which the United States is a party, the appropriate Council or Secretary shall take into account the traditional participation in the fishery, relative to other nations, by fishermen of the United States on fishing vessels of the United States.

(c) Promotion of stock management. If a relevant international fisheries organization does not have a process for developing a formal plan to rebuild a depleted stock, an overfished stock, or a stock that is approaching a condition of being overfished, the provisions of this Act in this regard shall be communicated to and promoted by the United States in the international or regional fisheries organization.

HISTORY:

(April 13, 1976, P.L. 94-265, Title I, § 102, 90 Stat. 336; Nov. 14, 1986, P.L. 99-659, Title I, § 101(b), 100 Stat. 3709; Nov. 28, 1990, P.L. 101-627, Title I, § 103(a), 104 Stat. 4439; Oct. 11, 1996, P.L. 104-297, Title I, § 104, 110 Stat. 3563.)

(As amended Jan. 12, 2007, P.L. 109-479, § 4, 120 Stat. 3578.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act April 13, 1976, P.L. 94-265, 90 Stat. 331, which appears generally as *16 USCS §§ 1801 et seq.* For full classification of this Act, consult USCS Tables volumes.

Effective date of section:

This section is effective Mar. 1, 1977, as provided by Act April 13, 1976, P.L. 94-265, Title I, § 104, 90 Stat. 336, which appears as *16 USCS § 1811* note.

Amendments:

1986. Act Nov. 14, 1986, substituted this section for one which read:

"Exclusive fishery management authority

"The United States shall exercise exclusive fishery management authority, in the manner provided for in this Act, over the following:

"(1) All fish within the fishery conservation zone.

"(2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation's territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.

"(3) All Continental Shelf fishery resources beyond the fishery conservation zone."

1990. Act Nov. 28, 1990 (effective Jan. 1, 1992, as provided by § 103(c) of such Act) substituted this section for one which read:

"Exclusion for highly migratory species

"The sovereign rights and exclusive fishery management authority asserted by the United States under section 101 over fish do not include, and may not be construed to extend to, highly migratory species of fish."

1996. Act Oct. 11, 1996 substituted "shall promote the achievement of optimum yield" for "promoting the objective of optimum utilization".

2007. Act Jan. 12, 2007, designated the existing provisions as subsec. (a) and inserted the subsection heading; and added subsecs. (b) and (c).

Other provisions:

Effective date of Nov. 28, 1990 amendment. Act Nov. 28, 1990, P.L. 101-627, Title I, § 103(c), 104 Stat. 4439, provides "The amendments made by this section [amending this section] shall take effect on January 1, 1992."

NOTES:

Related Statutes & Rules:

This section is referred to in *16 USCS § 1811*.

Interpretive Notes and Decisions:

United States is not indispensable party to suit brought in United States Supreme Court by Idaho against Oregon and Washington to secure equitable apportionment of various runs of anadromous fish migrating between spawning grounds in Idaho and Pacific Ocean; failure to join United States does not prevent Supreme Court from entering adequate judgment, even though United States controls ocean fishing of runs at issue, manages various dams that separate spawning grounds in Idaho from Pacific Ocean, and is trustee for various Indian tribes with treaty rights in fish at issue. *Idaho ex rel. Evans v Oregon & Washington* (1980) 444 US 380, 62 L Ed 2d 564, 100 S Ct 616, 28 FR Serv 2d 889.

Congress did not intend *16 USCS § 1812* to extend jurisdiction of Pacific Fisheries Management Council to inland fisheries used by Indians. *Pacific Coast Federation of Fishermen's Asso. v Secretary of Commerce* (1980, ND Cal) 494 F Supp 626, 10 ELR 20930.

16 USCS § 1812

National Marine Fisheries Service had authority pursuant to *16 USCS § 1812* to close access to highly migratory species due to potential impacts on listed turtle species within given area where Atlantic Tunas Convention Act, *16 USCS § 971* et seq., provided basis for fishery management plan's expanded territorial scope. *Blue Water Fishermen's Ass'n v Nat'l Marine Fisheries Serv.* (2002, DC Mass) 226 F Supp 2d 330.

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;

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(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing 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, economic information necessary to meet the requirements of this Act, 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;

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(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 analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

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

(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; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(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;

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(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;

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

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(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

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(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

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;

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(2)(A) 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;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

- (i) is based on the best scientific information available;
- (ii) includes criteria to assess the conservation benefit of the closed area;
- (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
- (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(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;

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(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 and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

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(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;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant considerations;

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(7) require fish processors who first receive fish that are subject to the plan to submit 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;

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

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(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)[sic]¹⁵ 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

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

¹⁵ So in original.

P.L. 109-479, sec. 104(b), MSA § 303 note

16 U.S.C. 1853 note

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

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SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

16 U.S.C. 1853a

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

¹⁶ Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

- (B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—
- (i) traditional fishing or processing practices in, and dependence on, the fishery;
 - (ii) the cultural and social framework relevant to the fishery;
 - (iii) economic barriers to access to fishery;
 - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
 - (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
 - (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]¹⁷ members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

¹⁷ So in original.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

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(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

16 U.S.C. 1853a note, 1854
MSA §§ 303A note, 304

P.L. 109-479, sec. 106(e), MSA § 303A note

16 U.S.C. 1853a note

APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(i), MSA § 303 note

EXISTING QUOTA PLANS.—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

104-297

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

104-297

SEC. 402. INFORMATION COLLECTION

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

109-479

(b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

16 U.S.C. 1881a-1881b
MSA §§ 402-403

(d) **CONTRACTING AUTHORITY.**—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

(e) **RESOURCE ASSESSMENTS.**—

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry--

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

104-297

SEC. 403. OBSERVERS

16 U.S.C. 1881b

(a) **GUIDELINES FOR CARRYING OBSERVERS.**—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

(1) when a vessel is not required to carry an observer on board because the facilities of such 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; and

(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

e-CFR Data is current as of July 12, 2011

Title 50: Wildlife and Fisheries

[PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES](#)

[Subpart C—Management Measures](#)

§ 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.

March 22, 2011. Copies of the panel's decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Dated: January 21, 2011.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2011-1668 Filed 1-25-11; 8:45 am]

BILLING CODE 3510-GT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-900]

Diamond Sawblades and Parts Thereof From the People's Republic of China (PRC): Rescission of Antidumping Duty New-Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Hanson Diamond Tools (Danyang) Co., Ltd. (Hanson), the Department of Commerce (the Department) initiated a new-shipper review of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China (PRC) covering the period January 23, 2009, through October 31, 2010. On January 10, 2011, Hanson withdrew its request; therefore, we are rescinding this new-shipper review.

DATES: *Effective Dates:* January 26, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Aditi Palli, AD/CVD Operations 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1757 and (202) 482-7871, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 2011, the Department initiated an antidumping duty new-shipper review of Hanson. See *Diamond Sawblades and Parts Thereof From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 76 FR 775 (January 6, 2011). On January 10, 2011, Hanson withdrew its request for a new-shipper review.

Rescission of New-Shipper Review

Section 351.214(f)(1) of the Department's regulations provides that the Department may rescind a new-shipper review if the party that requested the review withdraws its request for review within 60 days of the date of publication of the notice of initiation of the requested review. Hanson withdrew its request for a review on January 10, 2011, which is within the 60-day deadline. Therefore, the Department is rescinding the new-shipper review of Hanson.

Effective with the publication of this notice, entries of diamond sawblades and parts thereof from the PRC from Hanson will be subject to the PRC-wide cash-deposit rate of 164.09 percent.

Notification

This notice serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

This rescission and notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: January 20, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Operations.

[FR Doc. 2011-1651 Filed 1-25-11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Implantation and Recovery of Archival Tags for Highly Migratory Species

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

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 March 28, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 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 Michael Clark, (301) 713-2347 or michael.clark@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection. The National Oceanic and Atmospheric Administration (NOAA) allows scientists to implant archival tags in, or affix archival tags to, selected Atlantic Highly Migratory Species (tunas, sharks, swordfish, and billfish). Archival tags collect location, temperature, and water depth data that is useful for scientists researching the movements and behavior of individual fish. It is often necessary to retrieve the tags in order to obtain the collected data; therefore, persons catching tagged fish are exempted from other normally applicable regulations (*i.e.*, immediate release of the fish, minimum size, prohibited species, retention limits). These participants must notify NOAA, return the archival tag or make it available to NOAA personnel, and provide information about the location and method of capture if they harvest a fish that has an archival tag. The information obtained is used by NOAA in the formation of international and

domestic fisheries policy and regulations.

Scientists outside of NOAA who affix or implant archival tags must obtain prior authorization from NOAA and submit subsequent reports about the tagging of fish. NOAA needs this information to evaluate the effectiveness of archival tag programs, to assess the likely impact of regulatory allowances for tag recovery, and to ensure that the research does not produce excessive mortality.

II. Method of Collection

Tags and associated information are either mailed in to NOAA and/or information may be collected via telephone.

III. Data

OMB Control Number: 0648-0338.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

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

Estimated Number of Respondents: 32.

Estimated Time per Response: 30 minutes for reporting an archival tag recovery (25 respondents); 40 minutes each for notification of planned archival tagging activity and three reports (2 interim reports and 1 annual report) (7 respondents).

Estimated Total Annual Burden Hours: 32.

Estimated Total Annual Cost to Public: \$0.

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: January 20, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011-1514 Filed 1-25-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Economic Expenditure Survey of Golden Crab Fishermen in the U.S. South Atlantic Region

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

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 March 28, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 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 Dr. Scott Crosson, (305) 361-4468 or scott.crosson@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) proposes to collect economic information from golden-crab landing commercial fishermen in the U.S. South Atlantic region. The data gathered will be used to evaluate the likely economic impacts of management proposals. In addition, the information will be used to satisfy legal mandates under Executive Order 12898, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act, and other pertinent statutes.

II. Method of Collection

A standardized survey will be administered via in-person, telephone and/or mail to all fishermen participating in the fishery.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 9.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden

Hours: 9.

Estimated Total Annual Cost to Public: \$0.

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: January 20, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011-1515 Filed 1-25-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA173

Endangered Species; File No. 15552

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service Southeast Fisheries Science Center