

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 09/12/2011

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 05/27/2011

ACTION REQUESTED: Revision of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 201105-0648-005  
AGENCY ICR TRACKING NUMBER:  
TITLE: Highly Migratory Species (HMS) Scientific Research Permits, Exempted Fishing Permits, Letters of Acknowledgment, Display Permits, and Shark Research Fishery Permits  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0471  
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	868	537	310
New	485	236	118
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	-85	-76	-39
Change due to Agency Adjustment	-298	-225	-153
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
Shark research permit applications	NA	Federal Atlantic shark research permit requirements and application	
EFP, SRP, LOA and display permit applications	NA	EFP, SRP, LOA and display permit requirements and application	50 CFR 600.745
Scientific research plans			50 CFR 600.745
Amendments to exempted fishing permits			50 CFR 600.745
Interim reports	NA	HMS EFP, SRP and display permit interim report and instructions	
Annual reports	NA	HMS ERP, SRP and display permit annual report and instructions	
"No catch" reports			50 CFR 600.745
Departure notification calls to enforcement for collection of display animals			50 CFR 600.745
Tag applications			50 CFR 600.745
Shark permit notifiical calls for observer coverage			50 CFR 600.745

# 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 <span style="float: right;">b. <input type="checkbox"/> None</span> 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
	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
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) ( <i>if applicable</i> )	
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

### HIGHLY MIGRATORY SPECIES SCIENTIFIC RESEARCH PERMITS, EXEMPTED FISHING PERMITS, LETTERS OF ACKNOWLEDGEMENT, DISPLAY PERMITS, AND SHARK RESEARCH FISHERY PERMITS

OMB CONTROL NO. 0648-0471

#### A. JUSTIFICATION

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

This revision requests approval for extension of the information collection with some program changes, including updating forms for information collection for the Highly Migratory Species (sharks, tunas, swordfish and billfish) Exempted Fishing Permits (EFPs), including Scientific Research Permits (SRPs), Display Permits, and Letters of Acknowledgement (LOAs) and shark research permits. With this request, we are also changing the title from “Highly Migratory Species Scientific Research Permits, Exempted Fishing Permits, and Letters of Authorization” to “Highly Migratory Species Scientific Research Permits, Exempted Fishing Permits, Letters of Acknowledgement, Display Permits, and Shark Research Fishery Permits”.

The success of fisheries management programs depends on ensuring that allowable harvests are not exceeded. The requirements in this collection derive their authority from two separate acts, and the differences in those acts are responsible for the variations in the requirements applying to different species as discussed below.

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

Under both the Magnuson-Stevens Act and ATCA, non-scientific activities, including collection for education or display, may be authorized under EFPs. Exempted Fishing Permits are necessary to allow research conducted from a commercial or recreational fishing vessel that would otherwise be prohibited by existing regulations. A Display permit is issued for the collection of Highly Migratory Species (HMS) for the purpose of public display. In 2008, a shark research permit began to be issued under the exempted fishing permit program. Under the exempted fishing program, shark research permits are issued each year to a few, selected applicants who have submitted an application in response to a call for proposals outlining NMFS’ shark research objectives for a given year. Research within the shark research fishery facilitates scientific research for limited testing of fishing gear and methods; for the acquisition of data

from some portion of the historical Atlantic shark fishery; and/or for investigating means of reducing bycatch, economic discards, or regulatory discards.

In 2008, the application for the shark research fishery was combined with the application for EFPs, SRPs, Display permits, and LOAs. However, since implementation of the shark research fishery, having the applications combined has created some confusion for applicants of all the permits. To lessen confusion for applicants, NMFS is creating a separate application for the shark research fishery. No new information would be collected, however, having separate applications for the shark research fishery and for other permits under the purview of the exempted fishing program would make it more transparent for applicants regarding which permit they are applying for.

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

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

Finally, the exempted fishing program requirements have changed, based on a 2009 rule (August 25, 2009, 74 FR 42786), which changed some aspects of the exempted fishing program. For this collection, the change resulted in NMFS scientific observers (*i.e.*, the bottom longline observer, the pelagic longline observer, and the Northeast observer programs) no longer having to obtain an EFP in order to conduct authorized research activities. This revision reflects these programmatic changes.

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

The specific requirements on the applications for an exempted activity (either a Display permit, SRP, EFP, LOA or a shark research permit) are outlined below.

Display permits, SRPs, EFPs, and LOAs:

- purpose for the exempted fishing permit,
- advance notification of the fishing or research vessel to be used,
- a list of authorized samplers,
- the number and size classes of fish to be caught or retained,
- anticipated interactions with endangered or protected species, including marine mammals, and essential fish habitat,
- the anticipated locations to be fished,
- commencement dates and duration of the activities,
- sources of funding,

- the fishing methods to be employed, and
- notification of departure to collect animals for public display.

Shark research fishery:

- how the applicant plans on meeting the research objectives set forth by the Agency,
- past participation with the NMFS observer program,
- ability to carry a NMFS observer,
- past enforcement actions,
- past involvement in the commercial shark fishery,
- advance notification of the fishing or research vessel to be used,
- a list of authorized samplers,
- the anticipated locations to be fished,
- commencement dates and duration of the activities, and
- the fishing methods to be employed.

Post-activity reports would include (for all permits except the shark research permit):

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

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

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

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

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

within the restraints of the permit; the shark research permit also allows commercial fishermen to retain sandbar sharks. Management and enforcement use the reports from EFPs, SRPs, Display Permits, and LOAs to document catch for inclusion in the total catch, confirm the activities conducted were in accordance with the permit, and consider the permittee for future permits. Shark research permit holders do not have to submit interim or annual reports. These permit holders are subject to 100 percent observer coverage, and scientific observer reports describing all fishing activities (*i.e.*, landings, discards, interactions with protected resources) are used by managers and enforcement to monitor catch. Fishermen with a shark research permit, however, must report their commercial catch in the appropriate logbook for quota monitoring of other species.

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

Requiring EFP recipients to report their harvest per occurrence in both Federal and state waters as well as “no-catch” reporting allows management to document catch taken for inclusion in the total catch. In addition, tagging animals collected for public display, and notifying enforcement when departing for fishing trips for collection of animals for public display provides law enforcement personnel with a means to monitor fishing activities and to ascertain whether the vessel’s observed activities are in accordance with those authorized for that vessel. Annual reports provide a validation check against the data submitted in interim reports as well as a way for NMFS to determine if all individual reports have been submitted. Additionally, as many EFPs are issued for the purposes of research and/or public display, the scientific community, as well as the general public, will benefit as unauthorized and illegal fishing are deterred and more burdensome regulations are avoided. The information collected pursuant to scientific collection activities under EFPs may be incorporated in future stock assessments. Inadequate harvest controls under these EFPs could result in curtailment of collection activity and the loss of public benefits.

As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response 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. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NMFS decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to [Section 515 of Public Law 106-554](#).

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

This collection of information does not require the use of automated, electronic, mechanical, or other technological techniques; however, applications, interim, and annual reporting forms can be sent electronically to permit holders, and permit holders may also return forms electronically. These fillable forms are located on the HMS Management Division’s website at

[http://www.nmfs.noaa.gov/sfa/hms/Linkpages/reporting\\_forms.htm](http://www.nmfs.noaa.gov/sfa/hms/Linkpages/reporting_forms.htm). The applications, interim, and annual reports may be mailed, faxed, or e-mailed in to the HMS Management Division, as applicable, and the fishing notifications must be called in to enforcement.

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

#### **4. Describe efforts to identify duplication.**

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

Exempted fishing: There is no duplication with other collections. These EFPs are issued relative to specific requirements determined by NMFS and the applicant.

Shark research permits: There is no duplication with other collections. These permits are issued relative to specific research objectives outlined annually by NMFS.

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

Nearly all commercial fishing and collection vessels in the HMS fisheries are categorized as small businesses. The collection in and of itself will not have a significant impact on small businesses, and no special modifications of the requirements were considered necessary to accommodate the needs of small businesses.

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

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

Exempted fishing: Issuance of EFPs allows NMFS access to relevant information that can be used in the management of fisheries. If the information requested by exempted fishing and exempted educational activity permits is not obtained, there will be no standard way of dealing with these activities from region to region, and there could be more incidents of persons who think they are conducting scientific research being found in violation of the Magnuson-Stevens Act and/or ATCA. In addition, requiring EFP applicants to report landings or collections and to provide an annual summary of these activities will

increase the efficacy of management measures and reduce costs for both the U.S. Coast Guard and NMFS Office of Law Enforcement. Less frequent reporting would not support this goal, and would not allow the Agency to track landings and monitor quotas. Dart tags and PIT tags allow NMFS to avoid significant problems with accurate and timely enforcement of fisheries management measures. All data collected under these permits would be used in future stock assessments; without accounting for this mortality, such stocks could be subject to overfishing.

Shark research permits: Issuance of shark research permits identifies commercial shark fishermen that are participating in the shark research fishery. Without such a permit, these vessels would not be able to retain and sell sandbar sharks. Therefore, such a permit helps with enforcement of this fishery and allows commercial fishermen to retain and sell sandbar sharks. The shark research fishery also allows NMFS to conduct research cooperatively with commercial shark fishermen. This research allows testing of novel fishing gear and methods; the acquisition of data from some portion of the historical Atlantic shark fishery; and/or investigating means of reducing bycatch, economic discards, or regulatory discards as well as any appropriate research objectives identified by NMFS. Without such research, data collection from commercial shark fishermen for future stock assessments would not occur, modifications to fishing gears to reduce bycatch would not occur, and increased post-release survival of bycatch could not be investigated.

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

Interim reports (required within five days of the conclusion of a fishing trip) and “no catch” reports (required each month no fishing is conducted) are necessary for the management of different fisheries through quota monitoring.

Commercial fishermen carrying a shark research permit do not need to submit an interim or annual report. Participants in the shark research fishery must carry a scientific observer at all times when fishing within the shark research fishery, so catch reports equivalent to interim reports, regarding all catch during these trips, will be submitted by scientific observers. Fishermen with a shark research permit, however, must report their commercial catch in the appropriate logbook for quota monitoring of other species.

**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 11, 2011 (76 FR 1602) solicited public comments. There were no comments received.

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

NMFS does not make payments or gifts to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance**

**in statute, regulation, or agency policy.**

As stated on the forms, generally, the information collected is confidential under section 402(b) of the Magnuson-Stevens Act, as amended in 2006. It is also confidential under [NOAA Administrative Order 216.100](#), which sets forth procedures to protect confidentiality of fishery statistics. However, applicants for experimental fishing permits and exempted educational activities may be required to waive confidentiality of information as a condition of a permit. The terms and conditions of the permit are regulated under [50 CFR part 635.32 \(h\)](#) which requires permit holders to complete interim and annual report forms containing confidential information. Whenever data are requested, the Agency ensures that information identifying the pecuniary business activity of a particular vessel operator is not identified.

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

No information of a sensitive nature is requested.

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

An application for an EFP, SRP, Display Permit, and LOA must contain all the information required for an EFP application found at [50 CFR part 600.745\(b\)\(2\)](#). Information for a shark research permit must contain all the information governing the issuance of a Federal shark research fishery permit at 50 CFR Part 635. An application for a SRP and a LOA must include a research plan and/or all the information required for an EFP application. Based on recent information on the number of EFP, SRP, display, and LOA applications, NMFS estimates: 2 hours for a scientific research plan; 40 minutes for an application for an EFP, display, SRP, or LOA for Highly Migratory Species and 40 minutes for a shark research permit application; 1 hour for an interim report; 40 minutes for an annual fishing report; 15 minutes for an application for an amendment to an EFP; 5 minutes for notification of departure phone calls to NMFS Enforcement; 2 minutes for “no-catch” reports; and 2 minutes for tag applications. NMFS has updated the burden hours estimates based on past participation in the shark research fishery and in the exempted fishing program. The maximum number of participants/responses was used to update the burden estimates based on participation over the past three years.

11 scientific research plans @ 2 hours = 22 hours

30 shark research permit applications @ 40 minutes = 20 hours

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

24 amendments to exempted fishing permits @ 15 minutes = 6 hours

95 interim reports @ 1 hour = 95 hours

30 “no catch” reports @ 2 minutes = 1 hour

45 annual reports @ 40 minutes = 30 hours

10 departure notifications to enforcement for collection of display animals @ 5 minutes = 50 minutes (rounded up to 1 hour)

180 notification calls to the Southeast Fisheries Science Center for observer coverage @ 10 minutes = 30 hours

15 tag applications @ 2 minutes = 30 minutes (0.5 hours)

**Total annual burden for applying, notifying, tagging and reporting for HMS exempted fishing permits: 236 hours (rounded up from 235.5 hours).**

**Total respondents: 75 (45 EFP, SRP, LOA, and display permit applications + 30 shark research permit applications).**

**Total responses: 485 (11 research plans + 75 applications + 24 amendments + 95 interim reports + 45 annual reports + 30 “no-catch” reports + 10 departure notifications + 180 notification calls + 15 tag applications).**

**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).**

The cost to applicants is minimal, with only a letter, landing report forms, or local telephone call needed to apply, notify, or report. NMFS estimates that the total annual cost burden at \$119 (rounded down from \$119.24) with the average cost per EFP, SRP, LOA, or Display, or shark research permit application applicant at \$1.60 (rounded up from \$1.58).

NMFS typically receives amendments via e-mail, so there would be no cost associated with submitting these requests. In addition, departure notification calls are done via telephone to local enforcement offices, so there is no charge associated with these responses. *Therefore, the number of responses that would require mailing a form to NMFS include:*

Total EFP/SRP/LOA/Display/Shark Research applications (75), research plans (11), and tag applications (15) = 101

Total EFP/SRP/LOA/Display/ reports (95 interim reports+ 45 annual reports + 30 “no-catch” reports) = 170

Total Responses: = 101 + 170 = 271 responses

**Total EFP/SRP/LOA/Display/Shark Research applications, research plans, tag applications, and EFP/SRP/LOA/ and Display reports = 271 x \$0.44 postage per application, interim, and annual report = \$119.24.**

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

Costs for printing and supplying EFP collection information cards are expected to be minimal. The information cards have been produced with a word processor and can be faxed or mailed to EFP recipients. No new overhead costs will be incurred for these collections because NMFS will be using existing staff and equipment to conduct duplication, distribution, collection, and data entry. Costs of dart and PIT tags (microchips) for use by applicants will be incurred by NMFS; however, as inspection operations will be conducted by existing staff, no new personnel costs will be incurred. NMFS has

already purchased PIT tag readers (10 @ \$475 each for a total of \$4,750) and has already purchased a supply of dart tags that will last the duration of three years. The annual cost for PIT tags is estimated to be \$600 (100 tags @ \$6 per tag). Therefore, for the annual total cost to the Government is expected to be \$600.

The overall level of observer coverage due to the shark research fishery has not changed. There has not been an increase in the cost to the Government due to 100 percent observer coverage in the shark research fishery. There has been a NMFS scientific observer program in place for the current shark fishery. Approximately 10 shark vessels have been operating in the shark research fishery each year with 100 percent observer coverage. The NMFS observer program has been able to put scientific observers on vessels fishing within and outside the shark research fishery since the inception of the shark research fishery. This is expected to continue in the future as long as the observer program continues to be funded.

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

Adjustment: NMFS has updated the burden hour estimates for the shark research fishery and the exempted fishing program based on realized participation in both the shark research fishery and the exempted fishing program over the past three years. When the shark research fishery began, NMFS was unsure of the number of applications the Agency would receive for participation in the research fishery. A decrease of 333 hours is due to these revised estimates.

However, there were increases in the estimates associated with the number of scientific research plans submitted (up from 4 to 11 research plans submitted), increased number of applicants under the exempted fishing permit program (and associated annual and interim reports; an increase of, on average, 3 applicants per year), an increase in the amount of time associated with calling the SEFSC for NMFS observer coverage (an increase from 92 calls to 180 calls), and an increase in the number of amendments requested each year (up from 14 amendments to 24). An increase of approximately 39 hours is due to these revised estimates.

The net change in burden hours due to adjustments is 294 fewer burden hours.

Program change: The exempted fishing program requirements have changed, based on a 2009 rule (August 25, 2009, [74 FR 42786](#)), which changed some aspects of the exempted fishing program. For this collection, the change resulted in NMFS scientific observers (*i.e.*, the bottom longline observer, the pelagic longline observer, and the Northeast observer programs) no longer having to obtain an EFP in order to conduct authorized research activities. This results in three fewer applicants and associated interim and annual reports or a decrease of 7 burden hours.

Based on the adjustments and program change, there is a net decrease to the burden hours from 537 to 236 (a difference of 301) and the annual cost burden has decreased from \$310 to \$119 (a difference of \$191).

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

No publication is planned.

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

The expiration date will be displayed.

**18. Explain each exception to the certification statement.**

No exceptions are requested.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.

## 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 #0648-0471 Expires 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.

## 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:						

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## 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.

FEDERAL ATLANTIC HMS EXEMPTED FISHING REQUIREMENTS AND APPLICATION

*Applicant's Name:* \_\_\_\_\_

*Address:* \_\_\_\_\_ *Phone Number:* \_\_\_\_\_

\_\_\_\_\_ *Fax Number:* \_\_\_\_\_

*City* \_\_\_\_\_ *State* \_\_\_\_\_ *Zip* \_\_\_\_\_ *Email Address:* \_\_\_\_\_

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**Exempted Fishing Program**

1) *Purpose/Goals of the Exempted Fishing Activity, include justification for issuance of the EFP<sup>1</sup>:*

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

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

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

<sup>2</sup> 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)<sup>3</sup>:**

1. **Vessel Name** \_\_\_\_\_ **Owner's Name:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_ **Owner's Address:** \_\_\_\_\_

**Operator's Name:** \_\_\_\_\_

**Vessel Documentation Included? Yes** \_\_\_ **No**<sup>4</sup> \_\_\_ **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 #0648-0471 Expires 06/30/2011.

<sup>3</sup> Include additional sheets if more than three vessels are needed for the exempted fishing activity or shark research fishery.  
<sup>4</sup> 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](mailto: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](mailto: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 #0648-0471 Expires 06/30/2011.

**FEDERAL ATLANTIC SHARK RESEARCH PERMIT REQUIREMENTS AND APPLICATION**

**Applicant's Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Phone Number:** \_\_\_\_\_

\_\_\_\_\_ **Fax Number:** \_\_\_\_\_

**City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_ **Email Address:** \_\_\_\_\_

**Atlantic Shark Research Fishery**

Things to consider before submitting your shark research fishery application:

- a) You must submit a copy of your vessel documentation and Federal fishing permit with this application in order for your application to be deemed complete.
- b) Your vessel must have a current, valid USCG safety inspection decal (50 CFR 700.746 (d)) in order to be considered for the shark research fishery.
- c) If you have been charged criminally or civilly (*i.e.*, issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS related violation with such charges resulting in a final, adverse administrative or judicial order, guilty plea, or settlement agreement, your vessel will not be considered for the shark research fishery.
- d) Providing an e-mail address will allow NMFS to contact you to inform you if your application is complete, to ask for additional information, or to send your permit, if applicable.
- e) Please be sure to sign the application

1)

<b>What type of commercial permit do you possess?</b>	<b>Vessel 1 ID _____</b>	<b>Vessel 2 ID _____</b>	<b>Vessel 3 ID _____</b>
Directed			
Incidental			
Other permits held			

2) **Does your vessel meet all the requirements specified in 50 CFR 635.7 to carry an observer during all shark fishing trips pursuant to these permits?**

\_\_\_ Yes \_\_\_ No

<b>Does your vessel(s) have the following?</b>	<b>Vessel 1 ID _____</b>	<b>Vessel 2 ID _____</b>	<b>Vessel 3 ID _____</b>
Survival craft to accommodate observer (50 CFR 600.746 (f) (6))	Yes _____ No _____	Yes _____ No _____	Yes _____ No _____
Appropriate bunk space/ sleeping accommodations (50 CFR 635.7 (e) (1))	Yes _____ No _____	Yes _____ No _____	Yes _____ No _____

3a) **Have you been selected to carry an observer in the past 2 years?** \_\_\_ Yes \_\_\_ No

**FEDERAL ATLANTIC SHARK RESEARCH PERMIT REQUIREMENTS AND APPLICATION**

**3b) If yes, have you carried an observer in the past 2 years? \_\_\_Yes \_\_\_No**

**4) Have you fished for sharks commercially in the past 2 years? \_\_\_Yes \_\_\_No**  
**If yes, approximately how many trips have you taken per year? \_\_\_\_\_**

<b>5) Fishing gear typically deployed from vessel(s)</b>	<b>Vessel 1 ID _____</b>	<b>Vessel 2 ID _____</b>	<b>Vessel 3 ID _____</b>
Gillnet			
Bottom Longline			
Pelagic Longline			
Handgear			
Other (please specify)			

<b>6) Regions fished for sharks in the past</b>	<b>Vessel 1 ID _____</b>	<b>Vessel 2 ID _____</b>	<b>Vessel 3 ID _____</b>
Gulf of Mexico			
South Atlantic			
North Atlantic			
Other (please specify)			

<b>7) Availability</b>	<b>Vessel 1 ID _____</b>	<b>Vessel 2 ID _____</b>	<b>Vessel 3 ID _____</b>
In what month(s) is your vessel(s) available?			
In what area/region(s) is your vessel available?			

**8) Will you attend meetings required by NMFS to describe the objectives and/or research protocols regarding the shark research fishery?**  
 \_\_\_Yes \_\_\_No

**9) Will you carry out the research objectives set forth by the Agency?**  
 \_\_\_Yes \_\_\_No

**10) Will you carry out research in the Mid-Atlantic shark time/area closure area off the coast of North Carolina?**  
 \_\_\_Yes \_\_\_No

FEDERAL ATLANTIC SHARK RESEARCH PERMIT 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)<sup>1</sup>:**

1. **Vessel Name** \_\_\_\_\_ **Owner's Name:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_ **Owner's Address:** \_\_\_\_\_

**Operator's Name:** \_\_\_\_\_

**Vessel Documentation Included? Yes** \_\_\_ **No**<sup>2</sup> \_\_\_ **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 #0648-0471 Expires 06/30/2011.

<sup>1</sup> Include additional sheets if more than three vessels are needed for the exempted fishing activity or shark research fishery.  
<sup>2</sup> 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 SHARK RESEARCH PERMIT REQUIREMENTS AND 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.

**Shark Research Fishery Permit:** A valid shark research fishery permit is required to fish for, take, retain, or possess Atlantic sharks, including sandbar sharks, in excess of retention limits described in 635.24 (a). A shark research fishery permit is only valid for the vessel, owner, and operator(s) specified and cannot be transferred to another vessel, owner, or operator(s). A shark research fishery permit is only valid for the retention limits, time, area, and gear specified on the permit, and only when a NMFS-approved observer is on board. Issuance of a shark research fishery permit does not guarantee that the holder will be issued a NMFS-approved observer on any particular trip. Rather, issuance indicates that a vessel may be issued a NMFS-approved observer for a particular trip and on such trips may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of retention limits specified in 635.24 (a).

### Requirements

Per the HMS regulations, a valid shark research fishery permit must be on board the harvesting vessel and must be available when animals are landed.

An application will not be deemed complete until all of the information on the application is submitted to the HMS Management Division in writing. An incomplete application will not be considered until corrected in writing.

A shark research fishery permit 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 a shark research permit should have a valid HMS recreational or commercial HMS permit.

Once 80 percent of the commercial sandbar shark quota has been reached based on scientific observer reports, the shark research fishery will be closed.

The issuance of a shark research fishery permit 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.

Fishermen with a shark research fishery permit should report their commercial catch in the appropriate logbook.

## FEDERAL ATLANTIC SHARK RESEARCH PERMIT REQUIREMENTS AND APPLICATION

### Atlantic Shark Research Fishery Contact Information

Please submit any Shark Research Fishery applications with all required information to:

Guy DuBeck  
Highly Migratory Species Management Division (F/SF1)  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910  
[Guy.DuBeck@noaa.gov](mailto:Guy.DuBeck@noaa.gov)

For additional Shark Research Fishery Information please contact Guy DuBeck or Karyl Brewster-Geisz at 301-713-2347. Applications may be faxed to 301-713-1917.

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 #0648-0471 Expires 06/30/2011.

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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.*).

## 16 USCS § 971d

(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 &amp; 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.

## 16 USCS § 1812

## 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 &amp; 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.

permit sanctions following the assessment of a civil penalty or the imposition of a criminal fine. In sum, the Magnuson-Stevens Act treats sanctions against the fishing vessel permit to be the carrying out of a purpose separate from that accomplished by civil and criminal penalties against the vessel or its owner or operator.

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

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

(a) *Scientific research activity.* Nothing in this part is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities on board a scientific research vessel in the EEZ are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific activity. The Regional Administrator or Director will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a Letter of Acknowledgment. This Letter of Acknowledgment is separate and distinct from any permit or consultation required by the MMPA, the ESA, or any other applicable law. The Regional Administrator or Director will include text in the Letter of Acknowledgment informing the applicant that such a permit may be required and should be obtained from the agency prior to embarking on the activity. If the Regional Administrator or Director, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Administrator or Director will inform the applicant as soon as practicable and in writing. In making this determination, the Regional Administrator, Director, or designee shall consider: the merits of the individual proposal and the institution(s) involved; whether the proposed activity meets the definition of scientific research activity; and whether the vessel meets all the requirements for a scientific research vessel. The Regional Administrator or Direc-

tor may also make recommendations to revise the research plan to ensure the activity will be considered to be scientific research activity or recommend the applicant request an EFP. The Regional Administrator or Director may designate a Science and Research Director, or the Assistant Regional Administrator for Sustainable Fisheries, to receive scientific research plans and issue Letters of Acknowledgment. In order to facilitate identification of the activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the Letter of Acknowledgment on board the scientific research vessel and to make it available for inspection upon the request of any authorized officer. It is recommended that for any scientific research activity, any fish, or parts thereof, retained pursuant to such activity be accompanied, during any ex-vessel activities, by a copy of the Letter of Acknowledgment. Activity conducted in accordance with a scientific research plan acknowledged by such a Letter of Acknowledgment is presumed to be scientific research activity. An authorized officer may overcome this presumption by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Exempted fishing—(1) General.* A NMF'S Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. Compensation fishing must be conducted under an EFP if the activity would otherwise be prohibited by applicable regulations unless the activity is specifically authorized under an FMP or a scientific

research permit. Conservation engineering that does not meet the definition of scientific research activity, but does meet the definition of fishing must be conducted under an EFP if the activity would otherwise be prohibited by applicable regulations. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display must be permitted under exempted fishing procedures. An EFP exempts a vessel only from those regulations specified in the EFP. All other applicable regulations remain in effect. The Regional Administrator or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Administrator or Director to determine the applicable fee.

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

- (i) The date of the application.
- (ii) The applicant's name, mailing address, and telephone number.
- (iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.
- (iv) For each vessel to be covered by the EFP, as soon as the information is available and before operations begin under the EFP:

(A) A copy of the USCG documentation, state license, or registration of each vessel, or the information contained on the appropriate document.

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

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

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

(vii) The signature of the applicant.

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

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Administrator or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Administrator or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the FEDERAL REGISTER with a brief description of the proposal. Interested persons will be given a 15- to 45-day opportunity to comment on the notice of receipt of the EFP application. In addition, comments may be requested during public testimony at a Council meeting. If the Council intends to take comments on

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EFP applications at a Council meeting, it must include a statement to this effect in the Council meeting notice and meeting agenda. Multiple applications for EFPs may be published in the same FEDERAL REGISTER document and may be discussed under a single Council agenda item. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Administrator or Director will also forward copies of the application to the Council(s), the U.S. Coast Guard, and the appropriate fishery management agencies of affected states, accompanied by the following information:

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

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

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

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

(iii) As soon as practicable after receiving a complete application, including all required analyses and consultations (e.g., NEPA, EFH, ESA and MMPA), and having received responses from the public, the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Administrator or Director shall issue the EFP or notify the applicant in writing of the decision to deny the EFP and the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

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

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

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

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

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

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

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

(v) The Regional Administrator or Director should attach, as applicable, terms and conditions to the EFP, consistent with the purpose of the exempted fishing and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

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

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

(C) A citation of the regulations from which the vessel is exempted.

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

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

(F) Whether observers, a vessel monitoring system, or other electronic equipment must be carried on board vessels operating under the EFP, and any necessary conditions, such as predeployment notification requirements.

(G) Data reporting requirements necessary to document the activities, including catches and incidental catches, and to determine compliance with the terms and conditions of the EFP and established time frames and formats for submission of the data to NMFS.

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

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

(4) *Acknowledging permit conditions.* Upon receipt of an EFP, the permit holder must date and sign the permit, and retain the permit on board the vessel(s). The permit is not valid until signed by the permit holder. In signing the permit, the permit holder:

(i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations; and

(ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization and revocation by the Regional Administrator or Director.

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

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

(7) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued.

The EFP must be presented for inspection upon request of any authorized officer. Any fish, or parts thereof, retained pursuant to an EFP issued under this paragraph must be accompanied, during any ex-vessel activities, by a copy of the EFP.

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

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

(c) *Reports.* (1) NMFS requests that persons conducting scientific research activities from scientific research vessels submit a copy of any report or other publication created as a result of the activity, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director and Regional Administrator or Director.

(2) Upon completion of the activities of the EFP, or periodically as required by the terms and conditions of the EFP, persons fishing under an EFP must submit a report of their catches and any other information required, to the appropriate Regional Administrator or Director, in the manner and within the time frame specified in the EFP, but no later than 6 months after concluding the exempted fishing activity. Persons conducting EFP activities are also requested to submit a copy of any publication prepared as a result of the EFP activity.

(d) *Exempted educational activities—(1) General.* A NMFS Regional Administrator or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The trade, barter or sale of fish taken under this authorization is prohibited. The decision of a Regional Administrator or Director to grant or deny an

exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

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

- (i) The date of the application.
- (ii) The applicant's name, mailing address, and telephone number.
- (iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.
- (iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.
- (v) The scope and duration of the activity.
- (vi) For each vessel to be covered by the authorization:
  - (A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.
  - (B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.
  - (vii) The species and amounts expected to be caught during the exempted educational activity, and any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.
  - (viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.
  - (ix) The signature of the applicant.

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

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a determination whether the application contains all of the required information, is consistent with the goals, objectives, and requirements of the FMP or regulations and other applicable law, and constitutes a valid exempted educational activity. The applicant will be notified in writing of the decision within 5 working days of receipt of the application.

(ii) The Regional Administrator or Director should attach, as applicable, terms and conditions to the authorization, consistent with the purpose of the exempted educational activity and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

- (A) The maximum amount of each regulated species that may be harvested.
- (B) A citation of the regulations from which the vessel is being exempted.
- (C) The time(s) and place(s) where the exempted educational activity may be conducted.
- (D) The type, size, and amount of gear that may be used by each vessel operated under the authorization.
- (E) Data reporting requirements necessary to document the activities and to determine compliance with the terms and conditions of the exempted educational activity.
- (F) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.
- (G) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activities as a condition of the authorization.

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

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

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

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

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued, or be in the possession of at least one of the persons identified in the authorization, who must be present while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of "fishing," despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal. Any fish, or parts thereof, retained pursuant to an authorization issued under this paragraph must be accompanied, during any ex-vessel activities, by a copy of the authorization.

(e) *Observers.* NMFS-sanctioned observers or biological technicians conducting activities within NMFS-approved sea sampling and/or observer protocols are exempt from the requirement to obtain an EFP. For purposes of this section, NMFS-sanctioned observers or biological technicians include NMFS employees, NMFS observers, observers who are employees of NMFS-contracted observer providers, and observers who are employees of NMFS-permitted observer providers.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 74 FR 42794, Aug. 25, 2009]

**§ 600.746 Observers.**

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

(b) *Observer safety.* An observer will not be deployed on, or stay aboard, a vessel that is inadequate for observer deployment as described in paragraph (c) of this section.

(c) *Vessel inadequate for observer deployment.* A vessel is inadequate for observer deployment if it:

(1) Does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 285, 300, 600, 622, 635, 648, 660, and 679), or

(2) Has not passed a USCG Commercial Fishing Vessel Safety Examination, or for vessels less than 26 ft (8 m) in length, has not passed an alternate safety equipment examination, as described in paragraph (g) of this section.

(d) *Display or show proof.* A vessel that has passed a USCG Commercial Fishing Vessel Safety Examination must display or show proof of a valid USCG Commercial Fishing Vessel Safety Examination decal that certifies compliance with regulations found in 33 CFR Chapter 1 and 46 CFR Chapter 1, and which was issued within the last 2 years or at a time interval consistent with current USCG regulations or policy.

(1) In situations of mitigating circumstances, which may prevent a vessel from displaying a valid safety decal (broken window, etc.), NMFS, the observer, or NMFS' designated observer provider may accept the following associated documentation as proof of the missing safety decal described in paragraph (d) of this section:

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

(ii) A certificate of inspection pursuant to 46 U.S.C. 3311; or

(iii) For vessels not required to obtain the documents identified in (d)(1)(i) and (d)(1)(ii) of this section, a

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shark only from an owner or operator of a vessel who has a valid commercial shark permit issued under this part, except that dealers may purchase a shark from an owner or operator of a vessel that does not have a commercial permit for shark if that vessel fishes exclusively in state waters. Dealers may purchase a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer onboard the vessel for the trip in which the sandbar shark was collected. Dealers may purchase a shark from an owner or operator of fishing vessel that has a permit issued under this part only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b).

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

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

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

[64 FR 29135, May 28, 1999, as amended at 67 FR 6201, Feb. 11, 2002; 67 FR 77438, Dec. 18, 2002; 68 FR 715, Jan. 7, 2003; 69 FR 53362, Sept. 1, 2004; 69 FR 67284, Nov. 17, 2004; 71 FR 58173; Oct. 2, 2006; 73 FR 40711, July 15, 2008]

**§ 635.32 Specifically authorized activities.**

(a) *General*. (1) Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize activities otherwise prohibited by the regulations contained in this part for the conduct of scientific research, the acquisition of information and data, the enhancement of safety at sea, the purpose of

collecting animals for public education or display, the investigation of by-catch, economic discard and regulatory discard, or for chartering arrangements.

(2) Activities subject to the provisions of this section include, but are not limited to: scientific research resulting in, or likely to result in, the take, harvest, or incidental mortality of Atlantic HMS; exempted fishing and educational activities; programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks; or chartering arrangements. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, EFP, scientific research permit, display permit, chartering permit, or shark research permit issued in response to requests for authorization under this section.

(3) For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization.

(4) Inspection requirements specified in § 635.5(e) apply to the owner or operator of a fishing vessel that has been issued an exempted fishing permit, scientific research permit, display permit, or chartering permit.

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

(c) *Exempted fishing permits*. (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this

chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits.

(2) [Reserved]

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

(2) Notwithstanding the provisions of §600.745 of this chapter and other provisions of this part, a valid display permit is required to fish for, take, retain, or possess an HMS in or from the Atlantic EEZ for the purposes of public display. A valid display permit must be on board the harvesting vessel, must be available when the fish is landed, must be available when the fish is transported to the display facility, and must be presented for inspection upon request of an authorized officer. A display permit is valid for the specific time, area, gear, and species specified on it. Species landed under a display permit shall be counted against the appropriate quota specified in §635.27 or as otherwise provided in the display permit.

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

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

(5) All live HMS collected for public display are required to have either a conventional dart tag or a microchip Passive Integrated Transponder (PIT) tag applied by the collector at the time of the collection. Both types of tags will be supplied by NMFS. Conventional dart tags will be issued unless

PIT tags are specifically requested in the permit application and their use approved by NMFS. Terms and conditions of the permit will address requirements associated with the use of the tags supplied on a case-by-case basis.

(e) *Chartering permits.* (1) For activities consistent with the purposes of this section, §635.5(a), and §600.745(b)(1) of this chapter, NMFS may issue chartering permits for record keeping and reporting purposes. An application for a chartering permit must include all information required under §600.745(b)(2) of this chapter and, in addition, written notification of: the species of fish covered by the chartering arrangement and quota allocated to the Contracting Party of which the chartering foreign entity is a member; duration of the arrangement; measures adopted by the chartering Contracting Party of which the foreign entity is a member to implement ICCAT chartering provisions; copies of fishing licenses, permits, and/or other authorizations issued by the chartering Contracting Party of which the foreign entity is a member for the vessel to fish under the arrangement; a copy of the High Seas Fishing Compliance Act Permit pursuant to 50 CFR 300.10; documentation regarding interactions with protected resources; and documentation regarding the legal establishment of the chartering company. To be considered complete, an application for a chartering permit for a vessel must include all information specified in §600.745(b)(2) of this chapter and in §635.32(e) and (f).

(2) Notwithstanding the provisions of §600.745 of this chapter and other provisions of this part, a valid chartering permit is required to fish for, take, retain, or possess ICCAT-regulated species under chartering arrangements as specified in §635.5(a)(6). A valid chartering permit must be on board the harvesting vessel, must be available when ICCAT-regulated species are landed, and must be presented for inspection upon request of an authorized officer. A chartering permit is valid for the duration of the chartering arrangement or until the expiration date specified on the permit, whichever comes

first. Vessels issued a chartering permit shall not be authorized to fish under applicable Atlantic Highly Migratory Species quotas or entitlements of the United States until the chartering permit expires or is terminated.

(3) Charter permit holders must submit logbooks and comply with reporting requirements as specified in § 635.5. NMFS will provide specific conditions and requirements in the chartering permit, so as to ensure consistency, to the extent possible, with laws of foreign countries, the 2006 Consolidated HMS FMP and its amendments, as well as ICCAT recommendations.

(4) Observers may be placed on board vessels issued chartering permits as specified under § 635.7.

(5) NMFS will issue a chartering permit only if it determines that the chartering arrangement is in conformance with ICCAT's conservation and management programs.

(6) A vessel shall be authorized to fish under only one chartering arrangement at a time.

(7) All chartering permits are subject to sanctions and denials as indicated under § 635.4(a)(6).

(f) *Shark research permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue shark research permits.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid shark research permit is required to fish for, take, retain, or possess Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a). A valid shark research permit must be on board the harvesting vessel, must be available for inspection when the shark is landed, and must be presented for inspection upon request of an authorized officer. A shark research permit is only valid for the vessel and owner(s) combination specified and cannot be transferred to another vessel or owner(s). A shark research permit is only valid for the retention limits, time, area, gear specified, and other terms and conditions as listed on the permit and only when a NMFS-approved observer is onboard. Species landed under a shark research permit shall be counted against the ap-

propriate quota specified in § 635.27 or as otherwise provided in the shark research permit.

(3) Regardless of the number of applicants, NMFS will issue only a limited number of shark research permits depending on available quotas as described in § 635.27, research needs for stock assessments and other scientific purposes, and the number of sharks expected to be harvested by vessels issued LAPs for sharks.

(4) In addition to the workshops required under § 635.8, persons issued a shark research permit, and/or operators of vessels specified on the shark research permit, may be required to attend other workshops (e.g., shark identification workshops, captain's meeting, etc.) as deemed necessary by NMFS to ensure the collection of high quality data.

(5) Issuance of a shark research permit does not guarantee the permit holder that a NMFS-approved observer will be deployed on any particular trip. Rather, permit issuance indicates that a vessel is eligible for a NMFS-approved observer to be deployed on the vessel for a particular trip and that, on such observed trips, the vessel may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a).

(6) The shark research permit may be revoked, limited, or modified at any time, does not confer any right to engage in activities beyond those authorized by the permit, and does not confer any right of compensation to the holder.

(g) *Applications and renewals.* (1) Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register, on an annual or more frequent basis as necessary, notification of previously authorized exempted fishing, scientific research, public display, chartering, and shark research activities and to solicit public comment on anticipated EFP, scientific research permit, letter of acknowledgment, public display, chartering, or shark research permit activities. Applications for EFPs, scientific research permits,

public display permits, chartering permits, or shark research permits are required to include all reports specified in the applicant's previous permit including, if applicable, the year-end report, all delinquent reports for permits issued in prior years, and all other specified information. In situations of delinquent reports, applications will be deemed incomplete and a permit will not be issued under this section.

(2) For the shark research permit, NMFS will publish annually, in a FEDERAL REGISTER notice(s), a description for the following fishing year of the expected research objectives. This description may include information such as the number of vessels needed, regions and seasons for which vessels are needed, the specific criteria for selection, and the application deadline. Complete applications, including all information requested in the applicable FEDERAL REGISTER notice(s) and on the application form and any previous reports required pursuant to this section and § 635.5, must be received by NMFS by the application deadline in order for the vessel to be considered. Requested information could include, but is not limited to, applicant name and address, permit information, vessel information, availability of the vessel, past involvement in the shark fishery, and compliance with HMS regulations including observer regulations. NMFS will only review complete applications received by the published deadline to determine eligibility for participation in the shark research fishery. Qualified vessels will be chosen based on the information provided on the applications and their ability to meet the selection criteria as published in the FEDERAL REGISTER notice. A commercial shark permit holder whose vessel was selected to carry an observer in the previous two years for any HMS fishery but failed to comply with the observer regulations specified in § 635.7 will not be considered. A commercial shark permit holder that has been charged criminally or civilly (i.e., issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS related violation will not be considered for participation in the shark research fishery. Qualified vessels will be randomly selected to par-

ticipate in the shark research fishery based on their availability and the temporal and spatial needs of the research objectives. If a vessel issued a shark research permit cannot conduct the shark research tasks, for whatever reason, that permit will be revoked and, depending on the status of the research and the fishing year, NMFS will randomly select another qualified vessel to be issued a shark research permit.

(h) *Terms and conditions.* (1) For EFPs, scientific research permits, and public display permits: Written reports on fishing activities, and disposition of all fish captured under a permit issued under this section must be submitted to NMFS within 5 days of return to port. NMFS will provide specific conditions and requirements as needed, consistent with the Consolidated HMS Fishery Management Plan, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

(2) For chartering permits, written reports of fishing activities must be submitted to NMFS by a date specified, and to an address designated, in the terms and conditions of each chartering permit.

(3) An annual written summary report of all fishing activities, and disposition of all fish captured, under the permit must be submitted to NMFS for all EFPs, scientific research permits, display permits, and chartering permits issued under this section within 30 days after the expiration date of the permit.

(4) For shark research permits, all owners and/or operators must comply with the recordkeeping and reporting requirements specified in § 635.5 per the requirement of holding a LAP for sharks.

(5) As stated in § 635.4(a)(6), failure to comply with the recordkeeping and reporting requirements of this section could result in the EFP, scientific research permit, display permit, chartering permit, or shark research permit being revoked, suspended, or modified,

### § 635.33

and in the denial of any future applications.

[64 FR 29135, May 28, 1999, as amended at 68 FR 63742, Nov. 10, 2003; 68 FR 74786, Dec. 24, 2003; 69 FR 70399, Dec. 6, 2004; 73 FR 40711, July 15, 2008; 75 FR 30528, June 1, 2010]

#### § 635.33 Archival tags.

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

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

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

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

#### § 635.34 Adjustment of management measures.

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

### 50 CFR Ch. VI (10–1–10 Edition)

ing limit, as specified in § 635.27(d); and the minimum sizes for Atlantic blue and white marlin, as specified in § 635.20.

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

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

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

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

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

Wednesday, May 4 .....	9:00–15:00 Plant tours of Canadian aerospace OEMs for U.S. Companies. 16:00–16:30 Mission debriefing at hotel. PROGRAM END.
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### Participation Requirements

All parties interested in participating in the U.S. Aerospace Trade and Investment Mission must complete and submit an application package for consideration by the Department of Commerce.

All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission is designed for a minimum of 15 and a maximum of 20 companies will be considered for this mission. U.S. companies already doing business in the target markets as well as U.S. companies seeking to enter these markets for the first time are encouraged to apply.

### Fees and Expenses

After a company has been selected to participate in the mission, a participation fee paid to the U.S. Department of Commerce is required. The participation fee will be \$3,000 for large firms and \$2,000 for a small or medium-sized enterprise (SME),\* with up to two company representatives. The fee for a third company representative is \$250. Expenses for travel, lodging, in-country transportation (except for bus transportation to visit local aerospace OEMs on the third day of the mission), meals and incidentals will be the responsibility of each mission participant.

### Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

- Each applicant must also certify that the products and services to be

promoted through the mission are either produced in the United States or marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

### Selection Criteria for Participation

For Companies:

- Suitability of the company's products or services for the Canadian aerospace market
- Applicant's potential for business in Canada, including the likelihood of exports resulting from the mission
- Consistency of the applicant's goals and objectives with the stated scope of the mission

Diversity of company size, type, location, and demographics and traditional underrepresentation in business, may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

### Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, and will commence as soon as the trade mission is approved. Outreach will include publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<http://www.ita.doc.gov/doctm/tmcal.html>) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. CS Canada intends to conduct a webinar on "Opportunities in the Canadian Aerospace Market" to supplement recruitment efforts in January/February 2011.

Recruitment for the mission will begin immediately and close on March 14, 2011. Applications received after March 21, 2011 will be considered only if space and scheduling constraints permit. Applications will be available online on the mission Web site at: <http://www.buyusa.gov/Canada>.

Information can also be obtained by contacting the mission contacts listed below.

*Contacts:* Gina Rebelo Bento, Commercial Specialist—Aerospace, U.S. Consulate General in Montreal, PO Box 65 Desjardins Station, Montreal, QC H5B 1G1, *Tel:* 514-908-3660, *E-mail:* [Gina.Bento@trade.gov](mailto:Gina.Bento@trade.gov).

**Frank Spector,**

*Global Trade Programs, U.S. & Foreign Commercial Service.*

[FR Doc. 2011-308 Filed 1-10-11; 8:45 am]

**BILLING CODE 3510-FF-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Scientific Research, Exempted Fishing, and Exempted Activity Submissions

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

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

**DATES:** Written comments must be submitted on or before March 14, 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](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Jackie Wilson, (240) 338-3936 or [Jackie.Wilson@noaa.gov](mailto:Jackie.Wilson@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

Exempted Fishing Permits (EFPs), Scientific Research Permits (SRPs), Display Permits, Letters of Acknowledgment (LOAs), and Shark Research Permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and/or the

\* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see [http://www.sba.gov/services/contracting\\_opportunities/sizestandardstopping/index.html](http://www.sba.gov/services/contracting_opportunities/sizestandardstopping/index.html)). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see <http://www.export.gov/newsletter/march2008/initiatives.html> for additional information).

Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Issuance of EFPs and related permits are necessary for the collection of Highly Migratory Species (HMS) for public display and scientific research that is exempt from regulations (e.g., seasons, prohibited species, authorized gear, and minimum sizes) that may prohibit the collection of live animals or biological samples. A Display Permit is issued for the collection of HMS for the purpose of public display whereas a Shark Research Permit allows the National Marine Fisheries Service (NMFS) and commercial shark fishermen to conduct cooperative research to collect fishery-dependent data for management of the Atlantic shark fishery.

The regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activities with respect to Atlantic HMS. Since the Magnuson-Stevens Act does not consider scientific research to be "fishing," scientific research is exempt from this statute, and NMFS does not issue EFPs for bona fide research activities (e.g., research conducted from a research vessel and not a commercial or recreational fishing vessel) involving species that are regulated only under the Magnuson-Stevens Act (e.g., most species of sharks) and not under ATCA. NMFS requests copies of scientific research plans for these activities and indicates concurrence by issuing a LOA to researchers to indicate that the proposed activity meets the definition of research and is therefore exempt from regulation.

Scientific research is not exempt from regulation under ATCA. NMFS issues SRPs for collection of species managed under this statute (e.g., tunas, swordfish, billfish), which authorize researchers to collect HMS from bona fide research vessels (e.g., NMFS or university research vessel.) NMFS will issue an EFP when research/collection involving Atlantic tunas, swordfish, and billfishes occurs from commercial or recreational fishing platforms.

To regulate these fishing activities, NMFS needs information to determine the justification of granting an EFP, LOA, SRP, Display or Shark Research Permit. The application requirements are detailed at 50 CFR 600.745(b)(2). Interim, annual and no-catch/fishing reports must also be submitted to the HMS Management Division within NMFS. The authority for the HMS Management Division for requiring this information is found at 50 CFR 635.32(a).

## II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, mail and facsimile transmission of paper forms.

## III. Data

*OMB Control Number:* 0648-0471.

*Form Number:* None.

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

*Affected Public:* Non-profit institutions; State, local, or tribal government; business or other for-profit organizations.

*Estimated Number of Respondents:* 75.

*Estimated Time Per Response:* 2 hours for a scientific research plan; 40 minutes for an application for an EFP, Display Permit, SRP, Shark Research Permit or LOA for HMS; 1 hour for an interim report; 40 minutes for an annual fishing report; 15 minutes for an application for an amendment; 5 minutes for notification of departure phone calls to NMFS Enforcement; 2 minutes for "no-catch" reports; and 2 minutes for tag applications.

*Estimated Total Annual Burden Hours:* 236.

*Estimated Total Annual Cost to Public:* \$119 in recordkeeping/reporting costs.

## 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 5, 2011.

### Gwellnar Banks,

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011-275 Filed 1-10-11; 8:45 am]

**BILLING CODE 3510-22-P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Proposed Collection, Comment Request: Reporting of Pre-enactment Swap Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. The Commission recently adopted an interim final rule, as required by the Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), requiring counterparties to a pre-enactment unexpired swap to report such swaps according to such rules as the Commission may in the future adopt. This notice solicits comments on the record retention requirement that is embedded in the interim final rule's reporting requirement, which was recognized by the Commission in an interpretive note to the final rule.

**DATES:** Comments must be submitted on or before March 14, 2011.

**ADDRESSES:** You may submit comments, identified by "Pre-Enactment Swap Collection," by any of the following methods:

- The Agency's Web site, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the Web site.

- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *Hand Delivery/Courier:* Same as mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>.

### FOR FURTHER INFORMATION CONTACT:

Susan Nathan, Division of Market Oversight, Senior Special Counsel, CFTC, (202) 418-5133; e-mail: [snathan@cftc.gov](mailto:snathan@cftc.gov).