

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 600**

[I.D. 040802B]

**Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Atlantic Coastal Fisheries Cooperative Management; Application for Exempted Fishing Permits (EFPs)**

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

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Sea Scallop and Northeast Multispecies Fishery Management Plans (FMPs). However, consideration of comments on the proposal is required and further review and consultation may be necessary before a final determination is made that the activity will have no significant impacts on the human environment, and that the issuance of EFPs is warranted. NMFS is reviewing analyses prepared in an Environmental Assessment to help make final determinations. Therefore, NMFS announces that the Regional Administrator has made a preliminary decision to issue EFPs that would allow two federally permitted fishing vessels to conduct fishing operations otherwise restricted by the regulations governing the Atlantic sea scallop and Northeast multispecies fisheries. EFPs would allow the federally permitted vessels to compare a standard scallop dredge to a modified scallop dredge in order to estimate finfish bycatch reduction in the modified dredge. EFPs are necessary to exempt the vessels from days-at-sea (DAS), scallop gear, and multispecies closed area restrictions.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) require publication of this notification to provide interested parties the

opportunity to comment on applications for proposed EFPs.

**DATES:** Comments must be received on or before 5 p.m. Eastern Standard Time May 13, 2002.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on Scallop Dredge EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281-9135. A copy of the proposal and the Environmental Assessment are available from the Northeast Regional Office at the address stated above.

**FOR FURTHER INFORMATION CONTACT:** Peter Christopher, Fishery Policy Analyst, (978) 281-9288.

**SUPPLEMENTARY INFORMATION:** Ronald Smolowitz, of Coonamessett Farm, Inc., submitted an application to conduct an experimental fishery to test experimental scallop dredges outside of scallop DAS and within portions of Georges Bank Closed Area II and the Nantucket Lightship Closed Area. The experiment would be a continuation and expansion of experiments with similar gear that Coonamessett Farm, Inc., has conducted in the past.

The experiment is necessary to expand the level of information and data that Mr. Smolowitz has collected on the experimental scallop dredge and to conduct the experimental fishing in areas where both scallops and finfish species are in high abundance relative to other areas. The modified scallop dredge uses a modified dredge frame equipped with a roller sweep and excluder chains across the mouth of the dredge to reduce finfish bycatch. Prior experimental fishing with the gear has demonstrated a reduction of the bycatch of yellowtail flounder by 40 percent, skate by 40 percent, and winter flounder by 50 percent, compared to a standard dredge with 10-inch (25.4-cm) twine top mesh. Comparisons of the modified dredge and a standard dredge with 6-inch (15.2-cm) twine top mesh would allow the researcher to determine the overall effectiveness of the modified dredge.

The proposed experiment would be conducted as soon as possible following approval of the EFPs, if the final decision is to grant EFPs. Each participating vessel would be authorized to take two trips into a portion of either Georges Bank Closed Area II or the Nantucket Lightship Closed Area, or one trip into each area. In addition, each vessel would be authorized to take two trips outside of

the closed areas. Conducting the trips in both closed and open areas would allow the gear to be tested in areas of both extremely high and moderate scallop and finfish abundance. The information gathered from this experiment could be valuable for consideration in future management actions under the Atlantic Sea Scallop FMP. Participating vessels would be allowed to retain up to 15,000 lb (6,804 kg) of scallops and the regulated amount of incidental catch of other species (e.g., 300 lb (136 kg) of regulated multispecies and monkfish) per trip. EFPs would allow exemptions from the following regulations for Fisheries of the Northeastern United States (50 CFR part 648): DAS notification requirements specified at § 648.10(b)(1)(i); scallop dredge twine top restrictions specified at § 648.51(b)(4)(iv); scallop DAS restrictions specified at § 648.53; and Northeast multispecies Closed Area II and Nantucket Lightship Closed Area restrictions specified at § 648.81(b)(1) and (c)(1).

Participating vessels would land approximately 60,000 lb (27,216 kg) of scallops, 1,200 lb (544 kg) of Northeast multispecies, and 1,200 lb (544 kg) of monkfish. Minimal amounts of other legally retained bycatch species, such as skates, may be landed. The catch of scallops in excess of the 15,000-lb (6,804-kg) per trip allowance may occur in closed areas due to very high concentrations of scallops. This would result in some scallop discard, but discard survival rates of scallops is expected to be high. Discards of other species caught during experimental fishing is expected to be about 40,000 lb (18 mt) of flounder species and skates, 35,000 lb (16 mt) of monkfish, and 4,400 lb (2 mt) of other species. For comparison, the total allowed catch (TAC) in the 2000 Georges Bank Sea Scallop Exemption Program (the same portions of Closed Area II and the Nantucket Lightship Closed Area are proposed for access in the experiment) for yellowtail flounder was 725 mt with no catch limits on other species. Although information on the survival of finfish discards is lacking, not all discarded fish would die. Based on the analyses of the proposed action, the relative impact of the expected catch overall during the proposed experiment does not appear to be significant. The increase in DAS (exempting two vessels from DAS restrictions for a total of 40 DAS) is approximately 0.14-percent of the overall DAS used in the scallop fishery on an annual basis.

Based on the results of this EFP, this action may lead to future rulemaking.

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

Dated: April 22, 2002.

**John H. Dunnigan,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 020325069-2069-01; I.D. 071299C]

RIN 0648-AM91

#### Atlantic Highly Migratory Species (HMS) Fishing Vessel Permits; Charter Boat Operations

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

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

**SUMMARY:** Under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), NMFS proposes to amend the consolidated regulations governing the Atlantic HMS fisheries to: define operations and regulations for HMS Charter/Headboats (CHBs), require an Atlantic HMS recreational permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of Atlantic bluefin tuna (BFT) in the Gulf of Mexico by recreational and HMS CHB vessels, and allow NMFS to set differential BFT retention limits by vessel type (e.g., charter boats, headboats). Additionally, NMFS is requesting comments on, but not proposing at this time, an extension of the existing condition on commercial HMS permits to require that permit holders abide by more restrictive Federal regulations regardless of whether fishing occurs within or beyond the exclusive economic zone (EEZ).

Public hearings on this proposed rule will be held in May 2002 and will be announced in a separate **Federal Register** document. Comments on the proposed rule and supporting documents can be submitted by mail, by fax, or electronically through the NMFS e-Comments pilot project web site. In addition to comments on the proposed rule and supporting documents,

comments are also invited on the e-Comments pilot project.

**DATES:** Comments on the proposed rule and supporting documents must reach NMFS on or before May 28, 2002. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 28, 2002.

**ADDRESSES:** Please submit your comments on the proposed rule, supporting documents, and the e-Comments pilot project by only one of the following means; comments submitted via e-mail will not be accepted:

(1) By mail to Christopher Rogers, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282.

(2) By fax to Christopher Rogers at NMFS at 301-713-1917.

(3) Electronically through the NMFS e-Comments pilot project web site at <http://www.nmfs.noaa.gov>

Comments on the burden-hour estimates or other aspects of the collection of information that are part of this rulemaking can be submitted to NMFS but must also be mailed to the Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the supporting documents (see **SUPPLEMENTARY INFORMATION**) are available by sending your request to the address and fax number listed under (1) and (2), respectively, or by calling (301) 713-2347. The supporting documents will also be posted on the e-Comments website listed under (3).

**FOR FURTHER INFORMATION CONTACT:** For questions on this proposed rule, or on submitting public comments, call Brad McHale at (978) 281-9260.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 28, 1999, NMFS published the final rule (64 FR 29090) that implemented the HMS FMP and Amendment One to the Atlantic Billfish FMP, and that consolidated regulations for Atlantic HMS into one CFR part. After issuance of the final HMS FMP and publication of the final consolidated rule, NMFS received comment that several provisions of the regulations were inconsistent with the HMS FMP. Additionally, several commenters indicated that activities previously authorized under the HMS regulations when issued under separate CFR parts were now prohibited under the consolidated format of the

regulations. NMFS subsequently published a technical amendment to the final consolidated regulations (64 FR 37700, July 13, 1999) to correct certain drafting errors and omissions that were not consistent with the final HMS FMP. However, addressing other more substantive issues raised about omissions from, or corrections to, the consolidated regulations requires a regulatory amendment under the framework provisions of the HMS FMP and the amended Billfish FMP. NMFS issues this proposed rule to solicit public comment on the merits and potential impacts of changes to the regulations intended to address comments received on the consolidated regulations, and to further the objectives of the HMS and Billfish FMPs.

#### Charter/Headboat Operations

NMFS first required Charter/Headboat permits for Atlantic tunas vessels in 1994. Given quota reductions and allocation issues in the recreational BFT fisheries, it became necessary to improve inseason monitoring of catch, particularly for school BFT. In response, NMFS began issuing permits in order to develop a telephone dialing frame for a fishing effort survey. Recognizing that charter vessels and headboats tend to have higher effort rates than private recreational vessels and, on average, higher catch rates, NMFS established a separate permit category for the purposes of stratifying the two populations for the telephone survey. Issuing separate permits for private and for-hire vessels also facilitated the issuance of regulations tailored to the unique aspects of each category (e.g., catch limits, sale of fish).

In developing the HMS FMP, the HMS Advisory Panel (AP) noted the significance of the for-hire fleet in the recreational fisheries for tunas, billfishes and sharks. The HMS AP recommended that NMFS expand the CHB permit program from Atlantic tunas to include vessels targeting any HMS so that catch and effort monitoring could be improved, and NMFS adopted this permit requirement in the HMS FMP. With all HMS vessels included in the permit system, NMFS can now select a more representative sample of CHB vessels for the logbook program and telephone survey.

The HMS Charter/Headboat permit is required in lieu of any other commercial or recreational category tunas permit, and is considered a commercial tunas permit because Atlantic tunas caught by persons aboard vessels with this permit may be sold. Given this more restrictive statement of the permit requirement (i.e., the HMS Charter/Headboat permit