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New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

August 22, 2008

Ms. Patricia A. Kurkul  
Regional Administrator  
NMFS, Northeast Regional Office  
One Blackburn Drive  
Gloucester, MA 01930

**RE: Comments on the Small Dredge EFP Proposal**

Dear Pat:

The New England Fishery Management Council has no objection to the exempted fishery permit for the above-mentioned study as described in the *Federal Register* Vol. 73, No. 155 dated August 11, 2008.

If you have any question please contact me.

Sincerely,

A handwritten signature in black ink that reads "Paul J. Howard". The signature is written in a cursive style.

Paul J. Howard  
Executive Director

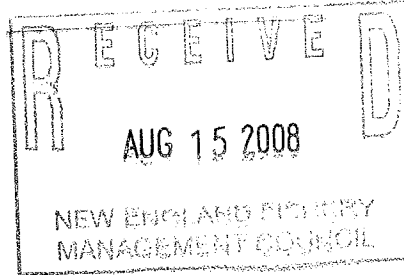




UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
One Blackburn Drive  
Gloucester, MA 01930-2298

August 12, 2008

Paul J. Howard, Executive Director  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950



Re: Experimental Fishing Permit Proposal

Dear Mr. Howard:

The regulations on exempted experimental fishing activities at 50 CFR 600.745(b)(3), require that the Regional Administrator forward copies of experimental fishing permit applications to the Regional Fishery Management 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 Exempted Fishing Permit (EFP) on the target and incidental species, including the effect on any Total Allowable Catch; (B) a citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity; and (C) biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on marine mammals and threatened or endangered species. Therefore, in addition to the experimental fishery application, we have attached the Federal Register notice that describes the activities proposed by the applicant.

Therefore, we have attached the re-issued Federal Register notice that describes the activities proposed by the applicant.

Please respond to the following contact person with any comments you have on the experimental fishing proposal within 15 days of your receipt of this letter.

CONTACT Ryan Silva  
Sustainable Fisheries Division, Northeast Region, NMFS  
One Blackburn Drive  
Gloucester, MA 01930  
Phone: (978) 281-9326  
FAX: (978) 281-9135

Thank you for your cooperation.

Sincerely,

George H. Darcy  
Assistant Regional Administrator  
for Sustainable Fisheries



cc: CBK (8/18)



- Mail to Sustainable Fisheries Division, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Scoping Comments on Supplemental NOI for Amendment 11;" or

- Fax to 978-281-9135. Mark the fax "Scoping Comments on Supplemental NOI for Amendment 11."

Copies of supporting documents used by the Council are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790, telephone 302-674-2331.

**FOR FURTHER INFORMATION CONTACT:** Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790, telephone 302-674-2331.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 4, 2005 (70 FR 10605), the Council published an NOI to prepare a SEIS to consider the impacts of alternatives for limiting access to the mackerel fishery. The Council subsequently conducted scoping meetings on the development of a limited access program, which the Council originally planned to include in Amendment 9 to the MSB FMP (Amendment 9). However, due to unforeseen delays in the development of Amendment 9, the Council notified the public on December 19, 2005 (70 FR 75114), that the mackerel limited access program would be considered in Amendment 11. The Council subsequently notified the public on February 27, 2007 (72 FR 8693), that it would begin the development of Amendment 11 and the associated SEIS simultaneously with the development of Amendment 10 to the MSB FMP.

**Additional Issues Under Consideration**

During the course of the development of Amendment 11, the Council has identified three additional issues that may be considered in this amendment, in addition to mackerel limited entry. The first issue is implementation of ACLs and accountability measures AMs for mackerel and butterfish. The MSRA requires that fishery management plans contain a mechanism for specifying ACLs such that overfishing does not occur in the fishery, including measures to ensure accountability (AMs). Examples of AMs include in-season closures or pay-back provisions in cases of overages. The second issue is an update of the description and

identification of EFH for all life stages of mackerel, *Loligo*, *Illex*, and butterfish (including gear impacts on *Loligo* squid egg EFH). NMFS guidance requires that EFH assessments should be updated every 5 years. The MSB EFH assessment has not been generally updated since it was completed in 1999, though gear impact analyses were completed for Amendment 9 to the MSB FMP (73 FR 37382, July 1, 2008). Additionally, EFH for *Loligo* eggs was designated in Amendment 9, therefore, a gear impact analysis for *Loligo* egg EFH will also be included in Amendment 11. The third issue is possible limitations on at-sea processing of mackerel that may be considered to limit overcapitalization of the mackerel fishery; the Council may consider a cap on the amount of at-sea processing or a limitation on at-sea processor vessel size.

**Request for Comments**

The public will have the opportunity to comment on the measures and alternatives being considered by the Council for Amendment 11 through public meetings and public comment periods required by the National Environmental Policy Act, the MSRA, and the Administrative Procedure Act. To date, the location and/or timing of these meetings and comment periods has yet to be finalized, but appropriate notice of them will be published in the **Federal Register**.

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

**Dated:** August 6, 2008.

**James P. Burgess,**

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

[FR Doc. E8-18489 Filed 8-8-08; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XJ53**

**Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit**

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

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

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant

Regional Administrator), has made a preliminary determination that the subject exempted fishing permit (EFP) application submitted by the Gulf of Maine Research Institute (GMRI), which would exempt Atlantic sea scallop (scallop) vessels from small dredge program gear restrictions, should be issued for public comment. The Assistant 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 Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made.

**DATES:** Comments on GMRI's EFP application must be received on or before August 26, 2008.

**ADDRESSES:** Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is *scallop.efp@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments on small dredge EFP." Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on small dredge EFP." Comments may also be sent via facsimile (fax) to (978) 281-9135.

**FOR FURTHER INFORMATION CONTACT:** Ryan Silva, Cooperative Research Liaison, phone: 978-281-9326, fax: 978-281-9135.

**SUPPLEMENTARY INFORMATION:** In response to the 2008 Atlantic Sea Scallop RSA Program request for proposals, NOAA's National Marine Fisheries Service received a proposal from GMRI entitled, "An assessment of hanging ratio and mesh orientation of twine-tops on selectivity and bycatch in the general category scallop dredge fishery in scallop limited access areas." The grant approved by NOAA Grants on July 26, 2008, as NOAA Award No. NA08NMF4540667. GMRI proposes to determine if changes to the dredge twine-top configuration would affect the selectivity of a 10.5-ft general category scallop dredge.

Under this award, GMRI was awarded 70,565 lb of scallops from the Elephant Trunk Access Area (ETAA) and 33 days-at-sea (DAS), with the proceeds from sold scallops compensating participating vessel owners and defraying research costs. Small dredge program restrictions at 50 CFR 648.51(e) require a vessel enrolled in the small dredge program to fish with one dredge

no more than 10.5 ft in width. GMRI would like to contract a vessel enrolled in the small dredge program to harvest their set-aside scallop allocation. GMRI requests this vessel be authorized to fish two dredges (max combined width of 31 ft) to harvest the set-aside scallops, thereby requiring exemption from the small dredge program dredge size restrictions. GMRI claims that this exemption would allow the vessel to harvest the set-aside scallops more efficiently, thus reducing vessel operating expenses and increasing the portion of proceeds supporting the research project.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs. The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

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

Dated: August 4, 2008.

**James P. Burgess**

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

[FR Doc. E8-18406 Filed 8-8-08; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XB13

#### Small Takes of Marine Mammals Incidental to Specified Activities; Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida

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

**ACTION:** Notice; receipt of application and proposed authorization for incidental harassment of marine mammals; request for comments and information.

**SUMMARY:** NMFS has received a request from Eglin Air Force Base (EAFB) for the take of marine mammals, by Level B harassment, incidental to Naval Explosive Ordnance Disposal School (NEODS) Training Operations at EAFB, Florida. Under the Marine Mammal

Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to the Air Force to take, by Level B harassment, two species of cetaceans at EAFB beginning in October 2008. NMFS is also requesting comments on its intent to promulgate regulations in 2009 governing the take of marine mammals over a 5-year period incidental to the activities described herein. NMFS issued an IHA for these activities in 2005, 2006, and 2007. No activities have occurred to date.

**DATES:** Comments and information must be received no later than September 10, 2008.

**ADDRESSES:** Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is *PR1.0648-XB13@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Howard Goldstein and Jaclyn Daly, Office of Protected Resources, NMFS, (301) 713-2289.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an

unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take of marine mammals by harassment. With respect to military readiness activities, the MMPA defines "harassment" as:

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

#### Summary of Request

On May 13, 2008, NMFS received an application from EAFB requesting an IHA for the harassment of Atlantic bottlenose dolphins (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) incidental to NEODS training operations and testing at Eglin Gulf Test and Training Range (EGTTR) at EAFB, Florida, in the northern Gulf of Mexico (GOM). NMFS issued an IHA for the same activity in 2005 (70 FR 51341, August 30, 2005), 2006 (71 FR 60693, October 16, 2006), and 2007 (72 FR 58290, October 15, 2007). Each of up to six missions per year would include up to 5 live detonations (up to 30 charges per year) of approximately 5-lb (2.3-kg) net explosive weight charges to occur in approximately 60-ft (18.3-m) deep water from one to three nm (1.9 to 5.6 km) off shore. Because this activity will

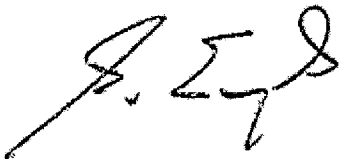
July 18, 2008

Pat Kurkul, Regional Administrator  
National Marine Fisheries Service  
Northeast Regional Office  
One Blackburn Drive  
Gloucester, MA 01930

Dear Ms. Kurkul:

Enclosed please find an application for an Experimental Fishery Permit to conduct project operations as part of an award made under the 2008 Sea Scallop Research Set-Aside Program (proposal number 08-SCA-13; grant number NA08NMF4540667). This project is titled "An assessment of hanging ratio and mesh orientation of twine tops on selectivity and bycatch in the general category scallop dredge fishery in scallop limited access areas". Please note that this application applies only to the compensation fishing required to fund this project. Please let me know if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Eayrs", written in a cursive style.

Steve Eayrs  
Principal Investigator

## EXPERIMENTAL FISHERY PERMIT APPLICATION

Application date: July 18, 2008

Project Title:

An assessment of hanging ratio and mesh orientation of twine tops on selectivity and bycatch in the general category scallop dredge fishery in scallop limited access areas.

Primary Investigator:

Steve Eays  
Research Scientist  
Gulf of Maine Research Institute  
350 Commercial Street  
Portland, ME 04101  
E-mail: [steve@gmri.org](mailto:steve@gmri.org)  
Phone: 207.228.1659  
Fax: 207.772.6855

Project Coordinator/ EFP Contact:

Daniel Salerno  
Collaborative Research Technician  
Gulf of Maine Research Institute  
350 Commercial Street  
Portland, ME 04101  
E-mail: [dsalerno@gmri.org](mailto:dsalerno@gmri.org)  
Phone: 207.228.1671  
Fax: 207.772.6855

Project Goals & Objectives:

The goal of this project is to determine whether changes to the twine configuration, i.e. hanging ratio or mesh orientation, will affect the selectivity of general category scallop dredges in limited access areas. The null hypothesis is that there is no difference in size or species selectivity of the scallop dredge when changing the hanging ratio or mesh orientation of the twine top.

The specific objectives are to:

- Document catch rates of sea scallops and finfish bycatch with a 10" twine top and hanging ratio of 2:1, 3:1 and 3:1 rotated 90°.
- Examine the effects of 2:1, 3:1 and 3:1 rotated 90° hanging ratios on species and size selectivity of a 10" twine top using small mesh cover net to retain dredge escapees.
- Provide video documentation of dredge and twine top cover performance and observe behavioral responses by finfish to the dredge.
- Provide sea scallop fishery members and managers with recommendations on gear configuration that will aid in the reduction of flounder bycatch while optimizing sea scallop retention.

Regulations from which exemptions are being requested:

Scallop fishery small dredge program restrictions found at § 648.51 (e) that require a vessel enrolled in the small dredge program to fish exclusively with one dredge no more than 10.5 ft in width. Project participants would like to contract a vessel enrolled in the small dredge program to harvest a portion of our awarded set-aside scallops from the Elephant Trunk Access Area (35,282 lb). The vessel would like to be able to use two dredges (max combined width of 31 ft) to harvest the set-aside. This will allow the vessel to harvest the scallops quicker and more efficiently, thus reducing vessel operating expenses and allowing a greater portion of the proceeds to be used to conduct the research



project. Since the set-aside scallops awarded from Elephant Trunk Access Area is a poundage allocation and not an effort allocation, we believe that granting this exemption is consistent with the goals of the Sea Scallop Research Set-Aside Program and the Sea Scallop FMP.

Catch information:

Target species: The target species for compensation fishing will be Atlantic sea scallops. Total catch of sea scallops will not exceed 35,282 pounds of meat weight

Bycatch species: The expected bycatch species and rates per pound of sea scallop meats include the following:

- Flounders bycatch rate 0.3% (fourspot, windowpane, and summer).
- Goosefish bycatch rate 1.6%.
- Skates bycatch rate 2.4% (little, rosette, clearnose and winter).
- Crabs bycatch rate 3.3% (jonah, horseshoe and rock).

Expected catch disposition: Sea scallops will be retained and landed at the conclusion of each compensation fishing trip. All other species will be returned to the sea as quickly as possible.

Anticipated impacts on marine mammals or endangered species: Interactions with marine mammals or sea turtles are not expected during the study. In the unlikely event of an interaction, project participants will comply with all regulatory requirements including mandatory reporting and sea turtle handling and resuscitation protocols.

Fishing vessel effort:

Type and size of gear to be used:

Gear used during compensation fishing will be two New Bedford-style scallop dredges (max combined width of 31 ft). All gear characteristics will match the standards typically employed by the scallop fleet and will comply with current scallop gear restrictions in the Scallop Fishery Management Plan found at § 648.51 (b)(2) and (4)(iv).

Number of days and tows:

The total number of days and tow conducted will ultimately be determined by sea scallop catch rates. The vessel will fish until the target of 35,282 pounds of scallop meats is achieved. The total number of days of compensation fishing is expected to be approximately 10 days.

Duration and speed of each tow:

Each tow will be 30 minutes in length at approximately 4 knots of speed.

Project timing & location:

We expect to conduct compensation fishing during the month of November, 2008 in the Elephant Trunk Access Area.

Proposed scallop vessel participant for compensation fishing:

F/V Linda, permit # 330504, documentation #: 640224, homeport: Boston, MA  
owner: Boat Santa Rita II, Inc.

Additional Considerations:

N/A

