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New England Fishery Management Council

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John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

January 5, 2009

Ms. Patricia A. Kurkul
Regional Administrator
NMFS, Northeast Regional Office
55 Great Republic Drive
Gloucester, MA 01930

RE: Comments on the GB PSP Closed Area Exemption 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. 246 dated December 22, 2008.

If you have any question please contact me.

Sincerely,

Paul J. Howard
Executive Director

an IHA to L-DEO for conducting a marine geophysical survey in Southeast Asia from March-July, 2009, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: December 15, 2008.

James H. Lecky,

Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. E8-30365 Filed 12-19-08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XL46

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

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

ACTION: Notification of a proposal for an EFP to conduct experimental 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 EFP application submitted by Wallace and Associates contains all the required information and warrants further consideration. The proposed EFP would extend the previously authorized EFP for an additional year to continue testing the safety and efficacy of harvesting surfclams and ocean quahogs from the Atlantic surfclam and ocean quahog Georges Bank (GB) Closure Area using a harvesting protocol developed by state and Federal regulatory agencies and endorsed by the U.S. Food and Drug Administration (FDA). 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 Surfclam and Ocean Quahog regulations and Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations

governing the fisheries of the Northeastern United States. The EFP would allow for an exemption from the Atlantic surfclam and ocean quahog GB Closure Area. 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.

DATES: Comments on this document must be received on or before January 6, 2009.

ADDRESSES: Comments on this notice may be submitted by e-mail.

The mailbox address for providing e-mail comments is DA8278@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: "Comments on GB PSP Closed Area Exemption." Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on GB PSP Closed Area Exemption." Comments may also be sent via facsimile (fax) to (978) 281-9135.

Copies of supporting documents referenced in this notice are available from Timothy Cardiasmenos, Fishery Policy Analyst, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930, and are available via the Internet at <http://www.nero.noaa.gov/sfd/clams>.

FOR FURTHER INFORMATION CONTACT: Timothy Cardiasmenos, Fishery Policy Analyst, phone 978-281-9204.

SUPPLEMENTARY INFORMATION: Truex Enterprises of New Bedford, MA, first submitted an application for an EFP on March 30, 2006, and public comment was solicited via the **Federal Register** on June 19, 2006 (71 FR 35254). On October 2, 2006, the applicant submitted additional information seeking to add states where the product harvested under the EFP could be landed. Comments for the revised EFP were published on November 14, 2006 (71 FR 66311). At that time, due to lack of concurrence on the Protocol for Onboard Screening and Dockside Testing for PSP Toxins in Molluscan Shellfish (Protocol) from the state of landing, the EFP was not issued. The applicant subsequently received concurrence from the state of landing and the state where the product is to be processed for the Protocol and EFP, and an EFP was authorized through the end of calendar year 2008.

The current applicant, Wallace & Associates, of Cambridge, MD, request

an extension of the previously authorized EFP to allow the catch and retention for sale of Atlantic surfclams and ocean quahogs from within the Atlantic surfclam and ocean quahog GB Closure Area. This area, located east of 69°00' W. long. and south of 42°20' N. lat., has been closed since May 25, 1990. This closure was implemented based on advice from the FDA after samples of surfclams from the area tested positive for the toxins (saxotoxins) that cause Paralytic Shellfish Poisoning (PSP). These toxins are produced by the alga *Alexandrium fundyense*, which can form blooms commonly referred to as red tides. Red tide blooms, also known as harmful algal blooms (HABs), can produce toxins that accumulate in filter-feeding shellfish. Shellfish contaminated with the saxotoxin, if eaten in large enough quantity, can cause illness or death from PSP. Due, in part, to the inability to test and monitor this area for the presence of PSP, this closure was made permanent through Amendment 12 to the FMP in 1999.

The primary goal of the proposed study is to test the efficacy of the Protocol that was developed by state and Federal regulatory agencies to test for presence of saxotoxins in shellfish, and which has been in a trial period through previous EFP's since 2006. This protocol would facilitate the harvest of shellfish from waters susceptible to HABs, which produce the saxotoxins, but that are not currently under rigorous water quality monitoring programs by either state or Federal management agencies. The Protocol details procedures and reporting for harvesting, testing, and landing of shellfish harvested from areas that are susceptible to HABs prior to the shellfish from entering commerce. A copy of the Protocol is available from the NMFS Northeast Region website: <http://www.nero.noaa.gov/sfd/clams>.

The proposed project would conduct a trial for the sampling protocol in an exemption zone within the larger 1990 GB Closure Area with the F/V Sea Watcher I (Federal permit #410565, O.N. 1160720). The exemption zone would not include any Northeast multispecies or essential fish habitat year-round closure areas. This proposed exempted fishing activity would occur during the 2009 calendar year, using surfclam and ocean quahog quota allocated to Truex Enterprises under the Federal individual transferable quota (ITQ) program. The applicant has estimated a harvest of 176,000 bushels (9,370,240 L) of surfclams and 80,000 bushels (4,259,200 L) of ocean quahogs from the exemption area. The exemption area has been tested in cooperation with the FDA

from 2006 to the present. No samples collected during that time were above acceptable levels for saxotoxins (80µg toxin/100g of shellfish).

The applicant has obtained endorsements for the EFP and the Protocol from the States of New Jersey and Delaware, the states in which it intends to land and process the product harvested under the EFP, respectively. Each state is responsible for regulating the molluscan shellfish industry within its jurisdiction and ensuring the safety of shellfish harvested within or entering its borders. This EFP would allow for an exemption from the Atlantic surfclam and ocean quahog GB Closure Area specified at 50 CFR 648.73(a)(4). The Protocol and the pilot project that would be authorized by this EFP have also since been endorsed by the executive board of the Interstate Shellfish Sanitation Conference.

The applicants may request minor modifications and extensions to the EFP throughout the course of research. EFP modifications and extensions may be granted without further public notice if they are deemed essential to facilitate completion of the proposed research and result in only a minimal change in the scope or impacts of the initially approved EFP request.

In accordance with NAO Administrative Order 216-6, a Categorical Exclusion or other appropriate NEPA document would be completed prior to the issuance of the EFP. Further review and consultation may be necessary before a final determination is made to issue the EFP. After publication of this document in the **Federal Register**, the EFP, if approved, may become effective following the public comment period.

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

Dated: December 16, 2008.

Emily H. Menashes,

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

[FR Doc. E8-30336 Filed 12-19-08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XM10

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting Air-to-Surface Gunnery Missions in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting air-to-surface (A-S) gunnery missions in the Gulf of Mexico (GOM), a military readiness activity, has been issued to Eglin Air Force Base (Eglin AFB) for a period of 1 year.

DATES: Effective from December 11, 2008, through December 10, 2009.

ADDRESSES: The authorization, Eglin AFB's application containing a list of the references used in this document, and NMFS' Environmental Assessment (EA) may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. A copy of Eglin's original 2003 application and its December, 2006 letter updating its request may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) and is also available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. A copy of the Final Programmatic EA (Final PEA) is available by writing to the Department of the Air Force, AAC/EMSN, Natural Resources Branch, 501 DeLeon St., Suite 101, Eglin AFB, FL 32542-5133.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301-713-2289, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)(MMPA) direct the Secretary of Commerce (Secretary) 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) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the affected species or stock(s), will not (where relevant)

have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings 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."

Section 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 marine mammals by harassment. The National Defense Authorization Act of 2004 (NDAA) (P.L. 108-136) removed the "small numbers" and "specified geographical region" limitations and amended the definition of harassment as it applies to "military readiness activities" to read as follows:

(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].

Summary of Request

Eglin AFB originally petitioned NMFS on February 13, 2003, for an authorization under section 101(a)(5)(D) of the MMPA for the taking, by Level B harassment, of several species of marine mammals incidental to programmatic mission activities within the Eglin Gulf Test and Training Range (EGTTR). The EGTTR is described as the airspace over the GOM that is controlled by Eglin AFB. A notice of receipt of Eglin's application and proposed IHA and request for 30-day public comment was published on January 23, 2006 (71 FR 3474). A 1-year IHA was subsequently issued to Eglin AFB for this activity on May 3, 2006 (71 FR 27695, May 12, 2006).

On January 29, 2007, NMFS received a request from Eglin AFB for a renewal of its IHA, which expired on May 2, 2007. This application addendum requested revisions to three components of the IHA requirements: protected species surveys, ramp-up procedures, and sea state restrictions. A **Federal Register** notice of receipt of the application and proposed IHA published on May 30, 2007 (72 FR 29974). These proposed modifications