

### Endangered Species Act (ESA)

Under Section 7 of the ESA, NSF has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this proposed seismic survey. NMFS Office of Protected Resources, Permits, Conservation and Education Division, has initiated formal consultation under Section 7 of the ESA with NMFS Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, if appropriate, authorizing incidental take. NMFS will conclude formal Section 7 consultation prior to making a determination on whether or not to issue the IHA. If the IHA is issued, L-DEO will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion issued to both NSF and NMFS Office of Protected Resources.

### National Environmental Policy Act (NEPA)

With its complete application, L-DEO provided NMFS an EA analyzing the direct, indirect and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. The EA, prepared by LGL Environmental Research Associated (LGL) on behalf of NSF and L-DEO is entitled Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Commonwealth of the Northern Mariana Islands, April–June 2010 (L-DEO EA). Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or, after review and evaluation of the L-DEO EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopt the L-DEO EA and make a decision of whether or not to issue a Finding of No Significant Impact (FONSI).

### Preliminary Determinations

NMFS has preliminarily determined that the impact of conducting the specific seismic survey activities described in this notice and the IHA request in the specific geographic region within the U.S. EEZ within the CNMI may result, at worst, in a temporary modification in behavior (Level B

harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this proposed action.

For reasons stated previously in this document, the specified activities associated with the proposed survey are not likely to cause TTS, PTS or other non-auditory injury, serious injury, or death to affected marine mammals because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The fact that cetaceans would have to be closer than 940 m (0.6 mi) in deep water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing PTS;

(3) The fact that marine mammals would have to be closer than 3,850 m (2.4 mi) in deep water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance at causing TTS; and

(4) The likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel.

As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed monitoring and mitigation measures.

While the number of marine mammals potentially incidentally harassed will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential Level B incidental harassment takings (see Table 3 above) is estimated to be small, less than a few percent of any of the estimated population sizes based on the data disclosed in Table 2 of this notice, and has been mitigated to the lowest level practicable through incorporation of the monitoring and mitigation measures mentioned previously in this document. Also, there are no known important reproduction or feeding areas in the proposed action area.

### Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to L-DEO for conducting a marine geophysical survey in the CNMI from April to June, 2010, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

### Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS' preliminary determination of issuing an IHA (see ADDRESSES). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 19, 2010.

**James H. Lecky,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648–XU21

### 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:** Notice; 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 for the Northeast Fisheries Science Center's (NEFSC) Study Fleet Program contains all of the required information and warrants further consideration. The EFP would exempt fishing vessels from minimum fish sizes and possession and landing limits for the purpose of collecting fishery dependent catch data and biological samples.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested

parties the opportunity to comment on EFP applications.

**DATES:** Comments must be received on or before *March 12, 2010*.

**ADDRESSES:** Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *NERO.EFP@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments on NEFSC Study Fleet EFP." 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 NEFSC Study Fleet EFP." Comments may also be sent via facsimile (fax) to (978) 281-9135.

**FOR FURTHER INFORMATION CONTACT:** Anna Macan, Fishery Management Specialist, *phone:* 978-281-9165, *fax:* 978-281-9135.

**SUPPLEMENTARY INFORMATION:** The EFP would exempt federally permitted commercial fishing vessels from the regulations detailed below while participating in the Study Fleet Program and operating under projects managed by the NEFSC. The EFP would temporarily exempt participating vessels from minimum size and possession limits for the purpose of at-sea sampling and, in limited situations for research purposes only, to retain and

land fish that would otherwise be prohibited.

Crew trained by the NEFSC Study Fleet Program in methods that are consistent with the current NEFSC observer protocol, while under normal fishing operations, would sort, weigh, and measure fish that are to be discarded. An exemption from the minimum fish sizes and possession limits for at-sea sampling is required because some discarded species would be on deck slightly longer than under normal sorting procedures.

The participating vessels would also be exempt from minimum size and possession limits because participating vessels, in limited situations, would be authorized to retain and land otherwise prohibited fish, for research purposes only. The vessels would be authorized to retain specific amounts of particular species in whole or round weight condition, including some undersized individuals and above the possession limits, in marked totes, which would be delivered to Study Fleet Program technicians. The participating vessels would be allowed to retain species below the minimum size requirement and above possession limits so that the vessels may collect biological samples. The NEFSC would require participating vessels to obtain written approval from the NEFSC Study Fleet Program prior to landing any fish in excess of possession limits and/or below minimum size

limits to ensure that the landed fish do not exceed any of the Study Fleet Program's collection needs, as detailed below. None of the landed biological samples from these trips would be sold for commercial use or used for any other purpose other than research.

The table below details the regulations from which the participating vessels would be exempt. The participating vessels would be required to comply with all other applicable requirements and restrictions specified at 50 CFR part 648, unless specifically exempted in this EFP. Upon implementation of approved measures in Amendment 16 to the Multispecies Fishery Management Plan (FMP), all participating vessels must also comply with any other applicable requirements contained in regulations implementing the amendment. This includes the proposed regulation, at § 648.87(b)(1)(v) (74 FR 69454, December 31, 2009), that all catches of stocks allocated to Sectors by vessels on a Sector trip shall be deducted from the Sector's Annual Catch Entitlement (ACE) for each NE multispecies stock regardless of what fishery the vessel was participating in when the fish was caught. Additionally, once Amendment 16 to the Multispecies FMP is implemented, this EFP may be revised to reflect any changes in regulatory citations and to address any exemptions that may no longer be necessary.

#### NEFSC STUDY FLEET PROGRAM EFP

# of Vessels .....	Up to 50.
Possession .....	Temporary Possession for at-sea sampling plus limited landing.
Exempted regulations in 50 CFR part 648 .....	<i>Size limits</i> § 648.83(a)(3) NE multispecies minimum size. § 648.93 Monkfish minimum fish size. § 648.103 Summer flounder minimum fish size. § 648.143(a) Black sea bass minimum fish size. <i>Possession limits</i> § 648.86(b) Atlantic cod. § 648.86(c) Atlantic halibut. § 648.86(e) White hake. § 648.86(g) Yellowtail flounder. § 648.86(g)(1) SNE Yellowtail flounder possession limit. § 648.86(j) GB Winter flounder. § 648.86(n)(1) Zero retention of SNE Winter flounder. § 648.94 Monkfish possession limit. § 648.22(c) Incidental possession limit of <i>Loligo</i> . § 648.322 Skate possession and landing restrictions. § 648.145 Black sea bass possession limits.

The following descriptions detail the NEFSC Study Fleet Program's Sampling Needs:

**Haddock**—Whole fish would be retained for maturity and fecundity research. The haddock retained would not exceed 30 fish per trip, or 360 fish for all trips. The maximum weight of haddock on any trip would not exceed

120 lb (54.43 kg) total weight per trip, and would not exceed 1,440 lb (653.17 kg) for all trips combined.

**Yellowtail Flounder**—Whole fish would be retained for maturity, fecundity, bioelectrical impedance analysis (BIA), food habits, and genetic research. The yellowtail flounder retained would not exceed 60 fish per

month from each of the three stock areas (Gulf of Maine (GOM), Georges Bank (GB), Southern New England/Mid-Atlantic (SNE/MA)), or 1,800 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 50 lb (22.70 kg) total weight, and would not exceed 1,500 lb (680.39 kg) for all trips combined.

**Summer Flounder**—Whole fish would be retained for maturity, fecundity, BIA, food habits, and genetic research. The summer flounder retained would not exceed 60 fish per month from each of the three stock areas (GOM, GB, SNE/MA), or 1,800 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 100 lb (45.36 kg) total weight, and would not exceed 3,000 lb (1,360.78 kg) for all trips combined.

**Winter Flounder**—Whole fish would be retained for maturity, fecundity, BIA, food habits, and genetic research. The winter flounder retained would not exceed 60 fish per month from each of the three stock areas (GOM, GB, SNE/MA), or 1,800 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) total weight, and would not exceed 2,250 lb (1,020.58 kg) for all trips combined.

**Monkfish**—Whole fish would be retained for maturity and fecundity research. Monkfish retained would not exceed 10 fish per trip, or 120 fish total for all trips. The maximum weight on any trip would not exceed 100 lb (45.36 kg) total weight, and would not exceed 1,200 lb (544.31 kg) for all trips combined.

**Cod**—Whole fish would be retained for tagging demonstrations and educational purposes. Cod to be retained would not exceed 15 fish per trip, or 60 cod for all trips. The maximum weight on any trip would not exceed 100 lb (45.36 kg) total weight, and would not exceed 600 lb (272.16 kg) for all trips combined.

**Barndoor Skate**—Whole and, in some cases, live skates would be retained for age and growth research and species confirmation. The barndoor skates retained would not exceed 20 fish per trip, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) total weight, and would not exceed 300 lb (136.08 kg) total for all trips combined.

**Thorny Skate**—Whole and, in some cases, live skates would be retained for age and growth research and species confirmation. Thorny skates retained would not exceed 20 fish per trip, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) whole weight, and would not exceed 300 lb (136.08 kg) total for all trips combined.

**Black Sea Bass**—Whole fish would be retained for examination of seasonal and latitudinal patterns in energy allocation. This effort is in support of an ongoing study at the NEFSC to evaluate BIA to measure fish energy density and reproductive potential for stock

assessment. Black sea bass retained would not exceed 75 fish per trip or 300 black sea bass total for all trips. The maximum weight on any trip would not exceed 250 lb (113.40 kg) total weight, and would not exceed 1,000 lb (453.59 kg) total for all trips combined.

The applicant may make requests to NMFS for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted by NMFS without further notice if they are deemed essential to facilitate completion of the proposed research and result in only a minimal change in the scope or impact of the initially approved EFP request. In accordance with NOAA 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 a 15-day public comment period.

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

Dated: February 22, 2010.

**James P. Burgess,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648-XU57**

#### Mid-Atlantic Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) will conduct an educational workshop on catch shares in cooperation with the Fisheries Leadership and Sustainability Forum (FLSF), the Atlantic States Marine Fisheries Commission (ASMFC), and the National Marine Fisheries Service (NMFS). The intent of this workshop is to share information and concerns about the use of catch shares by the MAFMC in managing fisheries within its jurisdiction and help decision makers learn from catch share

management successes, failures, and challenges in other regions.

**DATES:** The workshop will be held Tuesday, March 16, 2010 through Thursday, March 18, 2010.

**ADDRESSES:** The workshop will be held at the Kingsmill Conference Center, 1010 Kingsmill Road, Williamsburg, VA, 23185; telephone: (800) 832-5665.

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674-2331.

#### FOR FURTHER INFORMATION CONTACT:

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674-2331.

**SUPPLEMENTARY INFORMATION:** The workshop will begin with participants' registration at 10 a.m. on Tuesday, March 16, 2010 and recess at 5:30 p.m. or when business is completed; reconvene at 8:30 a.m. on Wednesday, March 17, 2010 and recess at 5:45 p.m. or when business is completed; and, reconvene at 8:30 a.m. on Thursday, March 18, 2010 and recess no later than 4 p.m. An agenda and briefing materials will be posted to the Council website ([www.mafmc.org](http://www.mafmc.org)) as they become available.

The workshop will be an educational forum to discuss catch share fishery management strategies. The term  $\geq$ catch share $\geq$  encompasses a broad spectrum of fishery management systems that share a common approach: allocating a portion of a scientifically determined catch limit to a discrete set of users (i.e. individuals, groups, or communities). The MAFMC adopted the first catch share programs in the United States when it implemented an ITQ (individual transferable quota) program for the surfclam and ocean quahog fisheries in 1990. The MAFMC also recently (2009) implemented a catch share system for tilefish (IFQ - individual fishing quota).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other