

The applicant requests a 2-year permit to capture, sample, and release green sea turtles on shallow reefs in Palm Beach County, FL. The research is designed to examine the seasonal habitat utilization, abundance, and movements of green sea turtles in this region. Forty sea turtles will be captured by hand at night and transported to land for sampling. All turtles will be weighed, measured, photographed, and have stomach lavage performed. Captures will be limited to twice a month to minimize the affects of possible recapturing. Ten of the 40 turtles captured will also have a VHF transmitter attached to the carapace and a unique identification number painted on the carapace with white epoxy paint. Turtles will be released within 12 hours of capture and will be returned to site of capture. At the completion of the study, tagged turtles will be located, recaptured, the tag removed, and released.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: November 21, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110102A]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coast Weakfish Fishery; Exempted Fishing Permits (EFPs)

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

ACTION: Notice of intent to issue EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Director, Office of Sustainable Fisheries, NMFS (Director) has received EFP applications from the State of North Carolina to conduct experimental fishing operations otherwise restricted by regulations prohibiting the use of flynets to fish for weakfish in a closed area of the exclusive economic zone (EEZ) south of Cape Hatteras. The Director has made a preliminary determination that the EFP applications contain all the required information; that the activities to be authorized under the EFP would be consistent with the goals and objectives of the Atlantic weakfish fishery under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act); and that the applications warrant further consideration.

A draft environmental assessment (EA) that addresses the impacts of the proposed study associated with the EFP applications has been prepared. This document requests public input in the form of written comments to NMFS relative to the issuance of EFPs to the State of North Carolina. If granted, these EFPs would authorize a flynet characterization study to be conducted by the North Carolina Division of Marine Fisheries in a closed area south of Cape Hatteras. Two participating flynet vessels, each with its own EFP and observer aboard, would conduct up to a total of 18 trips over each of two seasons, from 15 January through 1 April, in 2003 and 2004, south of Cape Hatteras, for a maximum of 36 trips. A third vessel would be deployed in the closed area for up to three (3) trips at the beginning of the study to test three proto-type turtle excluder devices (TEDs) developed by NMFS. An additional flynet vessel would test the proto-type TEDs in the area north of Cape Hatteras, where flynets are permitted to operate. This vessel would not require an EFP.

DATES: Written comments on the applications must be received on or before December 12, 2002.

ADDRESSES: Send comments to John H. Dunnigan, Director, Office of Sustainable Fisheries (F/SF), NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. The applications, related documents, including the draft EA, and copies of the regulations under which EFPs are issued may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Anne Lange 301-713-2334; FAX: 301-713-0596.

SUPPLEMENTARY INFORMATION: These EFPs are requested under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5101 *et seq.*, and regulations at 50 CFR 697.22 concerning the conduct of activities that are otherwise prohibited by the regulations in this part. Since regulations under the Atlantic Coastal Act must be consistent with the national standards set forth in section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, EFPs requested under the Atlantic Coastal Act need to be addressed in the same manner as EFPs requested under the Magnuson-Stevens Act, and regulations at 50 CFR 600.745 concerning scientific research activity, exempted fishing, and exempted educational activity.

Currently, weakfish regulations at 50 CFR 697.7(a)(5) prohibit any person from fishing with a flynet in the Exclusive Economic Zone (EEZ) off North Carolina in a closed area south of Cape Hatteras, as defined by this regulation. This area was closed to flynetters in order to reduce the harvest of the recovering weakfish stock, especially the harvest of juvenile weakfish known to congregate in the closed area. In addition, 50 CFR 697.7(a)(1) and (2) prohibited fishing for, harvesting, possessing, or retaining weakfish less than 12 inches (30.5 cm), in the EEZ. Further, 50 CFR 697.7(a)(3) prohibited fishing for weakfish coastwide in the EEZ with a minimum mesh size less than 3 1/4-inch (8.3 cm) square stretched mesh (as measured between the centers of opposite knots when stretched taut) or 3 3/4-inch (9.5 cm) diamond stretched mesh for trawls.

The North Carolina Division of Marine Fisheries (NCDMF) proposes to conduct a flynet characterization study, in cooperation with NMFS, with two flynet vessels using mesh at least as large as defined in the Atlantic States Marine Fisheries Commission's

(Commission) Weakfish Fishery Management Plan Amendment 3 (Amendment 3), and at 50 CFR 697.7(a)(3), to collect information on the size and species composition of finfish caught in modified flynets in the closed area. The NCDMF and NMFS would assess the effects, including the species and size composition of the catch, of using larger mesh size nets in the North Carolina flynet fishery if it were to be allowed to resume operations south of Cape Hatteras. The mesh size used in the flynet fishery, prior to the 1997 closure of this area, was significantly smaller than is currently required. This information would permit NCDMF, the Commission, and NMFS to properly assess the potential impacts of reopening the closed area to flynets with larger minimum-mesh sizes after management goals have been met and the stock is declared to be restored.

In addition, this study would address concerns about the take of endangered sea turtles by flynet gear. A 1997 NMFS Biological Opinion (BO) determined that the flynet fishery may adversely affect, but is not likely to jeopardize the continued existence of endangered sea turtles. An informal Endangered Species Act (ESA) section 7 consultation on this proposal determined that the study would be in compliance with the 1997 BO, and that the study should include testing of TEDs previously developed by NMFS as part of the reasonable and prudent measures of the 1997 BO. A third flynet vessel would operate in the closed area, at the beginning of the study, and would carry NMFS gear technology experts who would test several proto-type TEDs, developed by NMFS, to determine feasibility and effectiveness of these devices in flynets. An additional vessel would also test the proto-type TEDs in the area north of Cape Hatteras.

The two vessels that test the TEDs would follow protocols determined by the NMFS gear experts deployed for that portion of the study. If an effective TED is found, the two vessels in the flynet characterization study would be equipped with a TED of the proper design. If NMFS determined that TEDs can not effectively be deployed in flynets, other measures (e.g., reduced tow time) would be used for the remainder of the study to reduce impacts on turtles and may be considered for implementation by all vessels using flynets. In any case, the study would be terminated if takes (lethal or non-lethal) of loggerhead or Kemp's ridley sea turtles exceeded one half of the numbers (20 and 2) allowed in the Incidental Take Statement of the

1997 BO (that is, 10 or 1, in any one year).

Additional terms of the study proposal relate to sample design or address concerns raised by the Commission's Weakfish Fishery Management Board and its Technical Committee. The study would be terminated if any cumulative, monthly sample yields juvenile or undersized fish in excess of 10 percent of the total catch for that month. If an annual cap of 175,000 lbs (79,380 kg) on landings of weakfish taken south of Cape Hatteras is reached, the study would end for that year.

The EFP application states that catches made by the vessel that tests TEDs south of Cape Hatteras would be counted towards this cap. However, based on a request by NCDMF, NMFS is reconsidering this condition of the EFP. The TED work is separate from the flynet characterization study and NCDMF does not want to compromise the continuation and completion of that study, if during development and testing, the TEDs result in large amounts of bycatch. Multiple tows made on a single trip would be spatially separated by at least one (1) nautical mile to insure maximum geographic coverage and prevent directing effort on one specific school of fish. The entire contents of each tow on an individual trip would be kept separate and processed separately at the dock. NMFS observers would be required on each trip to monitor fishing activity and to record global positioning system (GPS) coordinates for each tow, interactions with any threatened or endangered species, tow time, depth, water temperature, air temperature, date, and time. NMFS observers would also record net dimensions and design specifications to document successful designs, if a net is found to effectively avoid catches of undersized fish.

In order to determine the ability of these flynets to minimize bycatch of undersized fish, uncultured catches would be sorted by tow for species composition and weight by market category, and sub-samples would be measured for length frequency. Regulatory discards, including sub-legal weakfish, and non-marketable species, would be sorted, weighed and a sub-sample would be taken for length frequency. These fish would be properly disposed of, and would not be sold. ESA and other protected species would be handled as required by law; observers would record and report all discarded red drum and striped bass.

Analysis of the study data would be coordinated by NCDMF and NMFS staff and the Commission would be briefed

through annual and final reports that would provide maps of the sample areas overlaid with the location of each tow, species encountered, total weights, numbers, and length frequency distributions of selected species. The final report would also summarize the findings from each year and attempt to relate variability in catches and species composition with environmental variables. The report would also summarize all interactions with sea turtles and include a discussion on the use of TEDs in the flynet fishery.

The EFPs would exempt up to three vessels from the requirements of the Atlantic weakfish regulations according to the provisions at 50 CFR 600.745 and 697.22, as follows: (1) Prohibiting of the use of flynets in the closed area of the EEZ off North Carolina as defined at § 697.7(a)(5); and (2) fishing for, harvesting, possession or retention of any weakfish less than 12 inches (30.5 cm) in total length from the EEZ as specified at § 697.7(a)(1) and (2) for data collection purposes.

The draft EA prepared for the proposed flynet characterization study found that no significant environmental impacts would result from the proposed action.

Dated: November 22, 2002.

Richard W. Surdi,

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

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DEPARTMENT OF ENERGY

Notice of Wetlands Involvement for the Transfer of Land at the Miamisburg Closure Project

AGENCY: Department of Energy (DOE), Ohio Field Office, Miamisburg Closure Project (MCP).

ACTION: Notice of wetlands involvement.

SUMMARY: This is to give notice of DOE's proposal to transfer ownership of approximately 57 acres of property of the MCP site, located approximately ten (10) miles southwest of Dayton, Ohio. The ownership of the subject property would be transferred to a non-Federal entity. A small portion (approximately 0.03 acre) of the property is classified as wetlands (*i.e.*, those areas that are inundated by surface or groundwater with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction). In accordance with 10