

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 continue work on the first year of a 2-year EFP issued in 2003. The State of North Carolina originally proposed conducting an experimental characterization study using flynets to fish for weakfish in a closed area of the exclusive economic zone (EEZ) south of Cape Hatteras, during 2003 and 2004. Study goals, however, were not met in that first year in 2003 due to poor weather conditions and insufficient availability of fish. Accordingly, the State of North Carolina has requested that they again be given 2 years to complete the study and that the study period be revised to cover the years 2004 and 2005.

DATES: Written comments on the applications must be received on or before December 18, 2003.

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: 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. 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 (NCDMF) 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 per year over each of two seasons, from 15 January through 1 April, in 2004 and

2005, south of Cape Hatteras, for a maximum of 36 trips.

The NCDMF has presently applied for two EFPs in 2004 to conduct the first year of a 2-year characterization study in the closed area in the EEZ south of Cape Hatteras, North Carolina. The NCDMF previously applied, and was granted by NOAA Fisheries, two identical EFPs for 2003 to perform an identical study, but due to inclement weather and insufficient availability of fish, NCDMF was unable to conduct year one of their study in 2003. Hence, NCDMF is reapplying to again begin their study, but in 2004. The previous NCDMF application also sought, and was granted by NOAA Fisheries, a third EFP to test turtle excluder devices (TEDs) in the closed area. Unlike the work involved in the characterization study, NCDMF was able to conclude its testing of TEDs, and is presently analyzing the data gained. Accordingly NCDMF does not presently seek a third EFP, as it did last year, for TED testing.

NOAA Fisheries has authority to grant the requested EFPs 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. The prohibited activities for which NCDMF seeks exemption involve weakfish regulations at 50 CFR 697.7(a)(5) that 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, other prohibitions for which exemption is sought are at 50 CFR 697.7(a)(1) and (2), which prohibits fishing for, harvesting, possessing, or retaining weakfish less than 12 inches (30.5 cm), in the EEZ and at 50 CFR 697.7(a)(3), which prohibits 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.

Previous Year's EFP

The present application by NCDMF for two EFPs to begin a characterization study is identical to the application for EFPs sought last year by NCDMF to perform this same study. Last year, on December 18, 2002, NMFS issued two

EFPs to NCDMF 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. Under last year's EFPs, the NCDMF was to 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 have permitted 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. Additional terms of the study proposal related to sample design or address concerns raised by the Commission's Weakfish Fishery Management Board and its Technical Committee. The study was to terminate 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. Multiple tows made on a single trip were to 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 were to be kept separate and processed separately at the dock. NMFS observers were to be required on each trip to monitor fishing activity and to record global positioning system coordinates for each tow, interactions with any threatened or endangered species, tow time, depth, water temperature, air temperature, date, and time. NMFS observers were to also record net dimensions and design specifications to document successful designs, if a net was 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 were to be sorted by tow for species composition and weight by market category, and sub-samples would be