



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF068

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit (EFP)

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

ACTION: Notice; receipt of EFP application; request for comments.

SUMMARY: NMFS announces the receipt of an exempted fishing permit (EFP) application from the West Coast Seafood Processors Association, Environmental Defense Fund, Oregon Trawl Commission, and Pacific Seafoods for an EFP Program to monitor and minimize salmon bycatch when vessels target rockfish in the shorebased individual fishing quota (IFQ) fishery. The NMFS West Coast Region's Assistant Regional Administrator for Sustainable Fisheries has made a preliminary determination that the subject EFP application contains all the required information and the EFP Program warrants further consideration. Therefore, NMFS announces that the Assistant Regional Administrator for Sustainable Fisheries proposes to recommend that EFPs be issued under an EFP Program that would allow as many as 50 commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the west coast of the United States. If awarded, the EFP Program would exempt participating limited entry bottom trawl vessels from the requirement to use selective flatfish trawl gear shoreward of the Trawl Rockfish Conservation Area (RCA) north of 40° 10' N. latitude in waters off the west coast. In addition, if awarded, the EFP Program would also allow

participating bottom trawl vessels that fish any place along the west coast an exemption to the minimum mesh size requirement of 4.5 inches.

The EFP Program is intended to provide additional flexibility in the configuration and use of bottom trawl gear for the vessels, as well as provide additional information on potential impacts to protected resources, particularly Chinook salmon bycatch, resulting from this added flexibility. The additional information would be used to enhance the management of the groundfish fishery and promote the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP). This EFP would be effective for 2017 and would expire no later than December 31, 2017, but could be terminated earlier under the terms and conditions of the EFP and other applicable laws. Additionally, NMFS, with input from the Pacific Fishery Management Council (Council), may extend the EFP beyond 2017, if appropriate. 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 must be received no later than 5 p.m., local time on [*INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by 0648-XF068, by any one of the following methods:

- E-mail: *nmfs.wcr.trawlgearfp@noaa.gov*
- Mail: Barry Thom, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Melissa Hooper.

FOR FURTHER INFORMATION CONTACT: Melissa Hooper: (206)526-4357 or *melissa.hooper@noaa.gov*.

SUPPLEMENTARY INFORMATION: This action is authorized by the FMP and implementing regulations at 50 CFR 600.745, which states that EFPs may be used to authorize fishing activities that would otherwise be prohibited.

If awarded, the EFP Program would give participating vessels an exemption from the current requirement at 50 CFR 660.130(b)(3)(ii)(A) to use selective flatfish trawl gear shoreward of the RCA and north of 40°10'N lat. EFP vessels would instead be subject to a small footrope requirement similar to what is required south of 40°10'N lat. Additionally, if awarded, the EFP Program would give participating vessels an exemption from the current requirement at 50 CFR 660.130(b)(2) to use a 4.5 inch (11.4 cm) mesh throughout the net for bottom trawl vessels with a Federal limited entry permit. Participating vessels would carry observers or electronic monitoring on 100-percent of trips, as is currently required in the IFQ program.

This exempted fishing activity is designed to provide participants with additional flexibility to configure their gear to re-establish a targeted rockfish fishery for widow, yellowtail, and chilipepper rockfish. The annual catch limits (ACLs) for both widow and chilipepper rockfish are increasing to levels not seen in several years, and the additional fish available could provide an opportunity for the redevelopment of processing and harvesting in those areas of the coast that had been constrained by the lower ACLs for these overfished species. Additionally, according to the applicants, the two-seam design of the nets can make it difficult to include some types of bycatch excluders. Eliminating the selective flatfish trawl gear requirement could provide vessels with more flexibility in designing their gear and would increase the opportunity for using bycatch reduction devices of different types.

Changes to the minimum mesh size would provide participating vessels with the flexibility to set their mesh size for the size of fish they intend to target. It is unlikely that

vessels would set their mesh size much lower than the current minimum of 4.5 inches as smaller fish tend to be less marketable. However, a smaller mesh size may reduce the number of fish that are gilled (i.e. stuck in the mesh) and, as a result, are unmarketable.

Information collected during under the EFP Program would be used to support the analysis for potential new and modification to existing gear regulations, including the Council's trawl gear modifications regulatory amendment which the Council took final action on earlier in 2016. With many of the current gear regulations having been in place for more than ten years, it is difficult for NMFS, the Council, and industry to predict the impacts of removing these regulations. In the past ten years, the industry has changed significantly. Reduction in capacity, innovations in gear technologies, and changes in management have all contributed to these changes. The EFP Program would help demonstrate what potential impacts today's fleet could have when some of the current gear regulations are eliminated.

In the early 1990s, the Council redefined bottom trawl gear and established 4.5 inches as the minimum mesh size for bottom trawl codends coastwide, and then required the larger mesh throughout the remainder of the trawl nets. These initial mesh regulations were intended to: 1) reduce the harvest of small and unmarketable fish, 2) reduce the incidental harvest of unwanted species, and 3) establish a standard, coastwide mesh requirement. However, the two different sizes throughout the mesh created a loophole for some vessels. By 1995, regulations were implemented by the Council to address this loophole. The new regulations required all bottom trawl nets to have a minimum of 4.5 inch mesh throughout the net (60 FR 13377, March 13, 1995). These measures were intended to give smaller-size fish the opportunity to escape from the entire trawl net, reducing the likelihood those fish would be caught.

Beginning in 2005, the Council required the use of selective flatfish trawl for all groundfish trawling on the west coast north of 40°10'N lat. shoreward of the RCA. The selective flatfish trawl gear was originally designed and implemented to reduce the bycatch of round fish, such as canary rockfish and salmon, while increasing the catch of flatfish species. Previously, management actions to protect vulnerable rockfish had greatly expanded the boundaries of the trawl RCA, moving the eastern boundary shoreward. These changes, while addressing the issues with vulnerable rockfish, also severely limited access to productive flatfish stocks. Selective flatfish trawl was seen as a way for the fleet to still access the fishing grounds while protecting the vulnerable rockfish species.

NMFS is concerned with the potential impacts a selective flatfish trawl exemption and minimum mesh size exemption may have on protected species. Available information suggests that bycatch rates of ESA-listed salmon, eulachon, and green sturgeon could increase as a result of the increased effort resulting from this EFP Program. NMFS is focused on developing an EFP that would meet the applicants' objectives to better target pelagic rockfish species while collecting information about bycatch and minimizing bycatch to the extent practicable. To address NMFS' concerns, the applicants are proposing that bycatch information, as well as haul level data and genetics will be collected on all salmon caught. Because a targeted fishery for chilipepper, widow, and yellowtail rockfish has not existed in more than a decade, there is limited information about expected bycatch in these target fisheries. The applicants are proposing that all salmon caught under this EFP Program would be counted against a salmon bycatch limit set by the NMFS for the EFP.

The applicants are proposing the following additional measures to minimize and monitor bycatch under the EFP Program:

- *Enrollment provisions* – Vessels will be required to contact NMFS prior to a specified deadline to enroll in the EFP for a minimum of one month. Vessels may opt in or out of the EFP Program on a monthly basis only, with the exception of the month of May, by notifying NMFS. During May, vessels using midwater gear after May 15th must declare out before they begin to use the gear and can only declare back in once they revert back to bottom trawl gear.
- *Salmon bycatch provisions* – Vessels will be required to operate under a 3,500 Chinook salmon bycatch cap under this EFP, and a specific Chinook salmon sub-cap of 595 Chinook (17 percent of the total Chinook salmon cap) on EFP Program trips south of 43° N, also known as the Eureka Management Area. Once the sub-cap limit is reached, the Eureka Management Area would be closed to participating vessels, but participating vessels could continue to fish under this EFP north of 43°N. If the Chinook salmon bycatch cap for the EFP Program (3,500 Chinook) is reached, the entire EFP Program would be closed for the remainder of the year. Vessels will be required to retain and land all salmon bycatch on all trips that fall under this EFP. Vessels participating in the EFP Program are also required to provide all salmon bycatch information as quickly as possible and without any restrictions on confidentiality.
- *Monitoring provisions* – Vessels participating in this EFP will be required to use 100 percent monitoring on all EFP Program trips, as is consistent with the requirements of the shoreside IFQ fishery. Vessels carrying observers must continue to sort their salmon bycatch by haul. Vessels participating in both the electronic monitoring EFP Program and this EFP Program must continue using

the same monitoring and reporting provisions required under the electronic monitoring EFP Program. All vessels, regardless of using electronic monitoring or observers, will be required to have 100 percent shoreside monitoring.

- *Real-Time Bycatch Monitoring provisions* – The participating vessels would work with Pacific States Marine Fisheries Commission to provide real-time, or close to it, monitoring of salmon bycatch on all EFP Program trips through fishtickets and shoreside monitoring reports. The reports would include number of landing events (total and since last report) and number of Chinook salmon landed (total and since last report).
- *Fleet accountability provisions* – In this EFP, the applicants have developed rules and definitions for bycatch avoidance and mitigation. These include definitions of a “high bycatch tow”, “adult salmon”, and “high bycatch trip.” Bycatch avoidances measures include moving locations when experiencing a “high bycatch tow” and a “stand down” rule where a participating vessel would have to declare out of the EFP Program following a series of high bycatch trips as defined in the application.
- *Area-based Avoidance provisions* – The EFP Program includes provisions regarding two closed areas:
 - Klamath River Salmon Conservation Zone – The Klamath River Conservation Zone, as defined in regulation at 50 CFR 660.131(c)(1), will be closed to participating vessels for the duration of the EFP Program.
 - Columbia River Salmon Conservation Zone – The Columbia River Salmon Conservation Zone, as defined in regulation at 50 CFR

660.131(c)(2), will be closed to participating vessels for the duration of the EFP Program.

The Pacific Fishery Management Council reviewed the EFP application at its September and November 2016 meetings and recommended that NMFS issue permits, under this EFP Program, as proposed with the following amendments:

- Set the Chinook salmon bycatch limit for this EFP Program at no more than 4,000 fish.
- Include a sub-limit of 17 percent, or 680 Chinook, for the Eureka management area.
- Remove the provision to trigger a closure of the Columbia River Salmon Conservation Zone to EFP fishing when 1,000 Chinook have been caught by EFP participants.
- Include the following criteria in the definition of a high bycatch trip: 1 adult Chinook (defined as 20 inches or greater) caught in the California portion of the Klamath Management Zone (KMZ) defined consistent with salmon regulations as waters from the California/Oregon border south to Horse Mountain.
- Vessels could fish concurrently under both this EFP Program and the electronic monitoring EFP Program.
- Participants must submit an informal report for the April 2017 Council meeting and a formal report for the June 2017 Council meeting.
- The permits under this EFP Program will not automatically renew for the 2018 year, but a resubmission of an application can be made to the Council in September 2017.

The applicants have not proposed a specific list of participating vessels, as is traditionally the case, but rather are proposing an overall EFP program that any vessel in the fleet could enroll in by applying to NMFS. Depending on the diversity of interested vessels, NMFS may need to develop several EFPs within the overall EFP program to accommodate different protocols for different gear configurations and monitoring types (e.g., electronic monitoring vs. observers). Therefore, NMFS is proposing to approve an overall EFP program, covering all of the individual EFPs, with consistent general requirements following the conclusion of the public comment period. Subsequently, we will issue the actual permits for the EFPs to individual participants according to the nature of their fishing activities. NMFS intends to use an adaptive management approach in which NMFS may revise requirements and protocols to improve the program without issuing another **Federal Register** notice, provided that the modifications fall within the scope of the original EFP Program. In addition, the applicants may request minor modifications and extensions to the EFP Program throughout the course of research. EFP Program 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 National Environmental Policy Act document would be completed prior to the issuance of any permits under this EFP Program. Further review and consultation may be necessary before a final determination is made to issue the permits. After publication of this document in the **Federal Register**, the EFP Program, if approved by NMFS, may be implemented following the public comment period. NMFS will consider comments submitted, as well as the Council's discussion at their November 2016 Council meeting, in deciding

whether or not to approve the application as requested. NMFS may approve the application in its entirety or may make any alternations needed to achieve the goals of the EFP Program.

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

Dated: December 27, 2016.

Alan D. Risenhoover,
Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 2016-31704 Filed: 12/29/2016 8:45 am; Publication Date: 12/30/2016]