



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XX042

**Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries;
Application for Exempted Fishing Permits**

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, Greater Atlantic Region, NMFS, has made a preliminary determination that a proposed exempted fishing permit contains all of the required information and warrants further consideration. This exempted fishing permit would allow midwater trawl Atlantic herring vessels to use electronic monitoring, coupled with portside sampling, in lieu of at-sea monitoring to satisfy their industry-funded monitoring requirements during 2020 – 2021. 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 exempted fishing permits.

DATES: Comments must be received on or before [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit written comments by either of the following methods:

- *Email: nmfs.gar.efp@noaa.gov. Include in the subject line "HERRING EM*

EFP."

• *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "HERRING EM EFP."

FOR FURTHER INFORMATION CONTACT: Maria Fenton, Fishery Management Specialist, 978-281-9196.

SUPPLEMENTARY INFORMATION:

Background

At its April 2018 meeting, the New England Fishery Management Council took final action on the New England Industry-Funded Monitoring (IFM) Omnibus Amendment and recommended a 50-percent coverage target for at-sea monitoring (ASM) coverage aboard vessels issued a Category A or B herring permit. This 50-percent coverage target includes a combination of Standardized Bycatch Reporting Methodology (SBRM) and IFM coverage. IFM coverage requirements may be waived on a trip-by-trip basis if monitoring coverage is unavailable, if vessels intend to land less than 50 mt of herring, or if vessels carry no fish on pair trawling trips (*i.e.*, wing vessels). The IFM Amendment also included a provision allowing midwater trawl vessels to purchase observer coverage in order to fish in Groundfish Closed Areas (GCA).

The New England Council reviewed the results from a midwater trawl electronic monitoring (EM) pilot study and concluded that a combination of EM and portside sampling was an appropriate substitute for ASM aboard midwater trawl vessels. The purpose of EM is to confirm catch retention and verify compliance with slippage restrictions. The purpose of portside sampling is to collect species composition data along with age and length information. However, rather than including EM and portside

requirements in the IFM Amendment, the Council recommended that NMFS administer EM and portside sampling via an exempted fishing permit (EFP) for midwater trawl vessels during the first 2 years of IFM in the herring fishery.

Findings from the voluntary EM study, as well as analyses in the Environmental Assessment for the IFM Amendment, suggest that EM and portside sampling may be a more cost-effective monitoring option than at-sea monitors or observers for the herring fishery. Developing another permanent monitoring option for the herring fishery would give herring vessels additional flexibility to select the most cost-effective monitoring option for their fishing operations, which would help mitigate the negative economic impacts of recent reductions to the herring annual catch limits (ACL) and associated revenue. The Council is required to evaluate the effectiveness of IFM in the herring fishery 2 years after implementation of the amendment. Data collected through the EFP would provide NMFS and the Council with additional information about how to most effectively and efficiently administer an EM and portside sampling program for the herring fishery. Information learned through this EFP will also help evaluate the utility of EM and portside sampling to monitor fishing in GCAs, or to monitor midwater trawl vessels when they choose to fish with alternate gears (*i.e.*, purse seine, bottom trawl).

Project Description

The project period for this EFP would cover IFM years 2020–2021 (April 1, 2020 – March 31, 2022), contingent upon availability of funds. Under this EFP, up to 12 midwater trawl vessels issued Category A or B herring permits would be required to run EM systems (video cameras and gear sensors) on 100 percent of declared herring trips. EM data from 50 percent of EFP trips would be selected for video review. Participating

vessels would be required to run EM systems regardless of whether they are carrying an SBRM observer on trips that are selected for SBRM coverage. Participating vessels would be required to adhere to all normal reporting requirements, except as exempted through this EFP, and would also be required to submit electronic vessel trip reports (VTR) in lieu of paper VTRs. Participating vessels would be required to adhere to individual Vessel Monitoring Plans (VMP) when fishing under the EFP. Each vessel's VMP would outline the catch handling protocols and EM system configurations that the vessel would use while participating in the program. Vessels would not be permitted to fish under the EFP until they hold a NMFS-approved VMP.

NMFS contracted Saltwater Inc., as the EM service provider for this EFP during IFM year 2020. Vessels would be required to use Saltwater Inc., as the EM service provider when fishing under this EFP. The EM service provider would be responsible for developing VMPs for participating vessels and establishing standards for approving VMPs and equipment installations. The EM service provider would also be responsible for: installing, maintaining, and uninstalling EM equipment on participating vessels; reviewing EM video footage; processing and annotating video and sensor data; generating EM data analysis summaries; and working with NMFS personnel to review program performance for refinement.

Participating vessels would primarily fish with midwater trawl gear on declared herring trips; however, some vessels may fish with alternate gears (*i.e.*, small-mesh bottom trawl, purse seine) under the EFP during the fishing year. Prior to the start of each year, participating vessels would be required to submit a fishing plan to the Principal Investigator (PI) and NMFS describing which gears they planned to fish with at what

points during the year. Participating vessels would also be required to notify the PI and NMFS one month ahead of when they planned to switch gears. Allowing vessels to switch gears during the year will incentivize participation in the EFP by allowing vessels flexibility to maximize fishing opportunities. Additionally, allowing midwater trawl vessels to fish with alternate gears on EFP trips would provide NMFS with preliminary information on using EM and portside sampling aboard herring vessels fishing with bottom trawl and purse seine gear. Participation in the EFP is not expected to lead to any shifts in effort that would not otherwise have occurred in the fishery.

Portside Sampling

Prior to any declared herring trip, representatives from vessels with Category A or B permits are required to follow the usual notification process for monitoring coverage. NMFS will notify the vessel representative if a trip is selected for SBRM or IFM coverage. Consistent with the Council-recommended 50-percent IFM coverage target for herring vessels, 50 percent of EFP trips would be selected for coverage. If selected for IFM coverage, participating vessels would be subject to portside sampling on the selected trip in lieu of hiring an at-sea monitor. If NMFS notifies a participating vessel that a trip has been selected for IFM coverage, that vessel would be required to procure portside sampling services from a NMFS-approved service provider. Consistent with the herring monitoring requirements at § 648.11(m)(1)(iv), the vessel would be prohibited from fishing for, taking, possessing, or landing any herring without procuring portside sampling services for that trip. Portside samplers would collect species composition data, along with age and length information.

Except as noted in the proposed exemptions below, when a trip is subject to portside sampling (selected for IFM coverage or paying for portside sampling in order to fish in a GCA), participating vessels would be required to comply with slippage prohibitions and consequence measures, and they would need to offload their catch at a NMFS-approved sampling station. Sampling station owners would be responsible for maintaining sampling stations according to NMFS safety standards. Portside samplers would complete a safety inspection upon arrival at each sampling station, prior to the start of an offload. If a station failed to meet all of the requirements outlined in the safety inspection checklist, the participating vessel would be issued a one-time waiver by the portside sampler to continue the offload and an explanation of the safety deficiency refusal. The portside sampler would also report the safety deficiency refusal to NMFS. If the original safety deficiency was not addressed within 48 hours of being reported to NMFS, participating vessels would not be permitted to continue offloading at that location on trips selected for portside sampling until the station had been brought into compliance.

Slippage Requirements

If a participating vessel were to slip catch on a trip selected for portside sampling, that vessel would be subject to all of the following consequence measures:

- The vessel operator must move at least 15 nautical miles (nm) (27.78 km) from the location of the slippage event before deploying any gear again, and must stay at least 15 nm (27.78 km) away from the slippage event location for the remainder of the fishing trip;
- The vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was

released; the estimated weight of each species brought on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hours of the end of the trip; and

- The vessel operator must report slippage events on the herring daily Vessel Monitoring System catch report and indicate the reason for slipping catch.

Fishing Inside of Groundfish Closed Areas

To comply with the 100-percent monitoring coverage requirement when fishing inside a GCA, participating vessels would be authorized to use EM and portside sampling, in lieu of carrying a human observer, even if not selected for IFM or SBRM coverage. Portside sampling for a GCA trip would not count towards achieving the vessel's 50-percent coverage rate if the vessel was not selected for IFM or SBRM coverage.

Proposed Exemptions

General Exemptions for Participating Vessels

This EFP would exempt participating vessels from the IFM ASM coverage requirements at § 648.11(m)(1)(ii). This exemption would authorize participating vessels to use EM, coupled with portside sampling, to satisfy their IFM coverage requirements in lieu of carrying a human at-sea monitor.

Slippage Exemptions for Participating Vessels Fishing Outside of Groundfish Closed Areas

This EFP would also exempt participating vessels from the slippage definition at § 648.2 under certain circumstances. Participating vessels fishing outside of GCAs would be authorized to discard species that are not required to be kept (*i.e.*, does not include river herring, shad, haddock, or other groundfish) at the grate after sorting on a trip selected for portside sampling. These discards would not be considered slippage and

would not trigger slippage consequence measures, and vessels would still be required to report them as discards. This exemption would not apply when vessels are fishing inside GCAs. When fishing inside GCAs, fish discarded at the grate after sorting would be considered slippage and would trigger slippage consequence measures. Feedback from industry suggests that only small quantities of fish are handpicked at the grate, so it is unlikely that this exemption would result in high volumes of fish being discarded prior to catch being sampled portside.

Vessels with observer or ASM coverage may discard fish at the grate after those fish are made available for sampling, and those discards are not considered slippage. However, fish discarded at the grate after sorting are considered slippage on vessels selected for portside sampling. This exemption would resolve operational differences resulting from the slippage definition and help create equity in vessel operations across gear and monitoring types. Additionally, NMFS is currently conducting a separate study investigating discarding at the grate after sorting on midwater trawl vessels. The vessels participating in that study are permitted to discard certain species at the grate after sorting, and those vessels would likely also participate in this EFP. This exemption would create consistency in catch handling practices between that study and this EFP, which would help minimize confusion for overlapping vessels and decrease the chances for accidental non-compliance with the EFP.

Exemptions for Participating Vessels Fishing Inside of Groundfish Closed Areas

This EFP would exempt participating vessels from the Northeast multispecies season and area restrictions at § 648.202(b)(1), and from the prohibition against fishing in a Northeast multispecies closed area without an observer on board at § 648.14(r)(2)(v).

The EFP would authorize participating vessels to use EM and portside sampling in lieu of carrying a human observer when fishing in a GCA. Purchasing portside sampling coverage to fish in GCAs is expected to be less expensive than purchasing observer coverage to fish in GCAs, so this exemption would provide an incentive for vessels to participate in the EFP. This exemption would also allow NMFS to assess the feasibility of using EM and portside sampling to monitor midwater trawl herring trips fished in GCAs.

This EFP would also exempt participating vessels from season and area restrictions at § 648.202(b)(2) and (4) when operationally discarding catch. The EFP would authorize participating vessels to operationally discard catch in GCAs without triggering the consequence measures described at § 648.202(b)(4). Operational discards in the herring fishery are defined as “small amounts of fish that cannot be pumped on board and remain in the codend or seine at the end of pumping operations.” Midwater trawl vessels are permitted to operationally discard outside of GCAs without triggering consequence measures, but not inside GCAs. This exemption would allow participating vessels to maintain operational consistency inside and outside of GCAs. This exemption would also allow NMFS to collect additional information on the frequency of operational discards in GCAs. This exemption would not undermine conservation objectives because participating vessels would be fully monitored on 100 percent of trips and would be fully accountable for their catch in GCAs.

If approved, project partners may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without

further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: March 25, 2020.

Hélène M.N. Scalliet,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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