



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XD965]

### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Atlantic Coastal Fisheries Cooperative Management 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 an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. The EFP would allow federally permitted commercial fishing vessels to fish outside fishery regulations in support of exempted fishing activities proposed by the NOAA Northeast Fisheries Science Center (NEFSC). Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative 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 on or before [*INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** You may submit written comments by the following method:

- Email: [nmfs.gar.efp@noaa.gov](mailto:nmfs.gar.efp@noaa.gov). Include in the subject line "NEFSC On-Demand Gear EFP."

All comments received are a part of the public record and may be posted for public viewing without change. All personal identifying information (*e.g.*, name,

address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "anonymous" as the signature if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Christine Ford, Fishery Management Specialist, *Christine.Ford@noaa.gov*, (978) 281-9185.

**SUPPLEMENTARY INFORMATION:** The NOAA NEFSC submitted a complete application for an EFP to conduct commercial fishing activities that the regulations would otherwise restrict, to continue trials of on-demand fishing gear that use one or no surface buoys and to test the ability of gear marking systems to consistently locate gear. This EFP would exempt the participating vessels from the following Federal regulations:

**Table 1 -- Requested Exemptions**

<b>CFR Citation</b>	<b>Regulation</b>	<b>Need for exemption</b>
50 CFR 697.21(b)	Gear marking requirements	For trial of trap/pot gear with no more than one surface marking on trawls of more than three traps, and trial of trap/pot gear with no surface marking on trawls of three or fewer traps.
50 CFR 648.84(b)	Gear marking requirements	For trial of gillnet gear with no more than one surface marking.
50 CFR 648.264(a)	Gear marking requirements	For trial of red crab trap/pot gear with no more than one surface marking on trawls.

**Table 2 -- Project Summary**

Project title	Development and trials of on-demand fishing systems in fixed gear fisheries.
Project start	08/22/2024
Project end	12/31/2025
Project objectives	To expand the trials of on-demand fishing systems with additional participants and fisheries to ensure testing has been conducted adequately across the breadth of regional commercial fishing conditions, with the aim of sustaining the fixed gear fishing industry, while reducing the entanglement risk to the critically endangered North Atlantic Right Whale.
Project location	Areas open to trap/pot and gillnet fishing in the Gulf of Maine, Georges Bank, southern New England, and mid-Atlantic.
Number of vessels	Lobster: up to 180, including up to 5 using grappling;

	Gillnet & other trap/pot: up to 20.
Number of trips	Up to 15,000 trips (200 vessels making an average of 1.5 trips per week) for trap/pot vessels; Up to 1,600 trips (20 vessels making an average of 1.5 trips per week) for gillnet vessels.
Trip duration (days)	Lobster: Ranging from 1-14 days depending on the fishing area.  Gillnet & other trap/pot: Variable based on fishery, target species, and fishing location, but within the range of standard commercial fishing trips.
Gear type(s)	Trap/pot and anchored-fixed gillnet.
Number of tows or sets	Lobster: Overall lobster fleet research effort will be capped at 1,800 modified trap trawls actively fished. The number of on-demand units actively fished per vessel will vary by season and fishing operation.  Gillnet & other trap/pot: Combined research effort for these fisheries will be capped at 200 on-demand units actively fishing.
Duration of tows or sets	Lobster: Variable, but expected to be 14 days or less. Will not exceed 30 days, as required by regulation.  Gillnet & other trap/pot: Typical commercial soak times.

### **Project narrative**

This project is a continuation and broadening of the NEFSC’s efforts to trial on-demand fishing systems (also known as ropeless) aimed at reducing the entanglement risk to protected species, mainly the North Atlantic right whale, in trap/pot and gillnet fisheries. The NEFSC’s existing EFP will expire on August 21, 2024, and authorizes on-demand gear trials on up to 195 trap/pot vessels and up to 5 gillnet vessels. As of March 2024, the NEFSC had collected data from 1,268 hauls of on-demand gear in Federal waters under its current EFP. Of these, 587 hauls took place in Lobster Management Area (LMA) 1, 199 in LMA 2, 437 in LMA 3, 19 in LMA Outer Cape, and 26 in the gillnet fishery. Between August 2023 and March 2024, the NEFSC reported four instances of gear loss not associated with gear conflict, and three assumed instances of gear conflict. For the assumed gear conflict instances, two likely involved groundfish trawlers, while the other may have involved discarded tilefish gear. The NEFSC has continued to conduct outreach to encourage use of the Trap Tracker app by non-participating vessels.

As of March 2024, approximately 44 fixed-gear and 6 mobile-gear vessels are using Trap Tracker.

This project would allow up to 180 lobster trap vessels to replace up to 10 of their existing trawls (up to 1,800 trawls total) with modified trawls, including in Atlantic Large Whale Take Reduction Plan (ALWTRP) Restricted Areas. It would also allow up to 20 total gillnet, red crab trap, and black sea bass pot vessels to replace up to 10 of their existing strings/trawls (up to 200 strings/trawls) with modified strings/trawls; these gear types would not be allowed in the ALWTRP Restricted Areas. Modified gear would replace one or both traditional end lines with acoustic on-demand systems and other alternatives to static buoy lines (including, but not limited to, spooled systems, buoy and stowed-rope systems, lift-bag systems, and grappling).

The ultimate goal of this project is to enable the continuation of some of the region's most valuable and historically significant fisheries while also meeting the requirements set forth by the ALWTRP and section 118(f) of the Marine Mammal Protection Act, specifically reducing the level of serious injury and mortality of North Atlantic right, humpback, and fin whales in commercial fisheries. To achieve this, the project includes objectives to test the efficacy of fully on-demand trawls/strings and the adequacy of gear marking systems that use data hubs and visualization platforms to share on-demand gear locations. The project is intended to address challenges and data needs associated with on-demand gear, including:

- Collecting data on location accuracy and gear conflict concerns, comparative timing of on-demand vs. traditional fishing modalities, refining hauling failures, and gathering industry feedback about usability and safety;
- Conducting data analysis on gear durability, manufacturer-specific performance reports and recommendations, and initiation of a list of criteria that could be used to certify or type approve innovative gear technologies;

- Continuing to evaluate the reliability of new innovative gears as they come on the market and work with manufacturers and industry to pilot test gears;
- Expanding experimental fishing in Restricted Areas in ways that make sense, focusing on safety (protected species and fishermen) and equity (fishermen and manufacturers) to assess the feasibility and efficiency of fishing fully on-demand trawls/strings; and
- Expanding communication efforts to participants, the broader fishing community, managers, and partners.

To ensure that on-demand fishing and gear marking technologies are adequately tested across the breadth of regional commercial fishing conditions, the NEFSC requests the flexibility to test on-demand gear across the geographic range of the Federal American lobster and Jonah crab fishery, including testing fully on-demand gear (no persistent vertical lines) in ALWTRP Restricted Areas. It also requests the opportunity to trial on-demand gillnet and other trap/pot gear across the Gulf of Maine, Georges Bank, southern New England, and the mid-Atlantic. In recognition of industry's interest in grappling as a low-cost alternative to acoustic on-demand systems, this project would also allow up to 5 vessels to retrieve up to 30 trawls via grappling. Although no grappling trials have occurred to date, four vessels/operators have expressed interest in participating in the study. Unlike what is authorized under the existing EFP, no grappling would be allowed in the ALWTRP Restricted Areas. To cover a greater area and target areas where data is needed, NEFSC has requested the flexibility to have greater than 200 participants during the permit period (with only 200 fishing at one time). It would provide requested modifications to the active participants, general locations, and technologies to be tested 1 month in advance. Priority would be given to participants who are seasonally excluded from fishing in certain areas and/or in offshore fisheries with limited entanglement mitigation options.

This permit would only exempt vessels from the specified Federal regulations in Federal waters. It would not exempt the vessels from any requirements imposed by any State, the Endangered Species Act, the Marine Mammal Protection Act, or any other applicable laws. The applicant would be responsible for obtaining all required State authorizations. Other than gear markings, all trap/pot trawls and gillnet strings would be consistent with the regulations of the management area where the vessel is fishing and would be fished in accordance with the participating vessels' standard operations (number and length of trips, soak times, trap limits, *etc.*).

The use of on-demand lobster trap gear in the ALWTRP Restricted Areas is limited to gear without any persistent vertical lines. The NEFSC's existing EFP allows vessels to modify up to 20 trawls each, but caps effort to 300 total trawls in the Restricted Areas. If necessary due to a high level of interest and limited capacity, the NEFSC may require a demonstrated history of fishing within ALWTRP Restricted Areas as a condition for participation in on-demand trials in those areas.

In the first phase of participation, staff from the NEFSC and the gear manufacturers would provide training to ensure the system is working as intended and all participants have sufficient experience with the gear before borrowing from the gear cache library. In the second phase, participating vessels would rig an on-demand system to one end of a standard trawl or string and fish it as a hybrid (with 1 traditional surface marking) for at least 10 hauls per system. In phase three, participants would fish the gear as part of normal fishing operations, including fishing fully on-demand gear and fully on-demand trap trawls in the ALWTRP Restricted Areas. In some cases, a scientific observer may be on board, and/or GoPro Systems (or equivalent) may record gear retrievals. The NEFSC would provide standardized data collection sheets to all participants, but individually-identifiable data will only be made public with the express permission of the vessel owner.

The NEFSC also plans to include targeted geolocation studies in areas with limited trawling and/or dredging to test new location-marking systems on the seafloor and automated location-marking when gear is set and retrieved. This EFP would support efforts to improve gear-marking and gear-conflict avoidance technologies, including testing the amount of effort to mark sub-surface gear location in the Trap Tracker app (vs. surface location where the gear is deployed) and other sub-surface gear marking technologies. This EFP would also test the use of the EarthRanger platform that displays gear locations from various gear-marking technologies. The NEFSC would demonstrate and encourage adoption of these technologies with non-participant vessels.

The NEFSC proposes the following best practices and risk reduction measures:

- All vessels would report all right whale sightings to NMFS via *ne.rw.survey@noaa.gov* or NOAA (866-755-6622) or the U.S. Coast Guard (Channel 16) and record sightings on data sheets;
- All vessels would retrieve on-demand vertical lines as quickly as possible to minimize time in the water column;
- All vessels would adhere to current approach regulations—a 500-yard (457.2-meter) buffer zone created by a surfacing right whale—and must depart immediately at a safe and slow speed, in accordance with current regulations. Hauling any lobster gear would immediately cease (by removal) to accommodate the regulation and be reinitiated only after it is reasonable to assume the whale has left the area;
- All vessels would provide mandatory, weekly gear loss reports;
- All vessels would operate within a 10-knot speed limit when transiting Restricted Areas or when whales are observed;
- For fully on-demand gear without traditional surface markings, participants would use the Trap Tracker or an equivalent technology for retrieval and set positioning

details, which would be available to Federal, State, and corresponding enforcement personnel, as well as other fishermen;

- For fully on-demand gear without traditional surface markings, on-demand vertical lines would be marked with unique yellow/black/orange marks above the regional markings, in addition to ALWTRP regulations (per agreement with the NMFS Atlantic Large Whale Take Reduction Team Coordinator);
- When fishing in ALWTRP Restricted Areas, vessels would check real-time right whale sightings information (such as Right Whale Sightings Advisories and Whale ALERT) before setting any gear and avoid areas of high right whale abundance, and all vessels would be recommended to follow this process when setting gear outside the ALWTRP Restricted Areas;
- Enforcement will be provided with and trained on the Trap Tracker app (for seeing subsea marked gear) prior to the start of the trials;
- A unique flag will be flown by each vessel for enforcement recognition; and
- The NEFSC would continue to provide regular updates to the Greater Atlantic Regional Fisheries Office (GARFO), the New England and Mid-Atlantic Fishery Management Councils, the Atlantic States Marine Fisheries Commission, and constituents on project developments and performance.

Vessels fishing fully on-demand lobster trawls in ALWTRP Restricted Areas would be required to follow additional practices:

- All participants would carry a NEFSC scientist on a subset of trips to collect additional data and oversee trial performance;
- Stowed hauling lines in on-demand units would contain unique colored identification marks consisting of orange marks above each regional ALWTRP marking;

- No floating groundline would be used on research trawls, including where otherwise legally allowed between the first trap and anchor or on-demand unit;
- If any large whale species came within 500 yards (457.2 meters) of a participating vessel during hauling, fishing would immediately cease, by either removal or resetting, and be reinitiated only after it was reasonable to assume the whale(s) had left the area; and
- Participants will be provided with information on species identification as well as protocols to report live, dead, or entangled sightings of all large whale species. All whale sightings would be recorded on data sheets.

If approved, the applicant 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: May 13, 2024.

**Kelly Denit,**

*Director, Office of Sustainable Fisheries,*

*National Marine Fisheries Service.*