



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF799

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

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

ACTION: Notice; receipt of exempted fishing permit applications; request for comments.

SUMMARY: NMFS announces the receipt of two exempted fishing permit (EFP) applications.

The first application was received from The Nature Conservancy (TNC) for an EFP to test commercial pot fishing gear for selective harvest of lingcod. The lingcod pot gear EFP is intended to provide for the selective harvest of lingcod with fixed gear inside the non-trawl rockfish conservation area (RCA), allowing harvest of lingcod within existing annual catch limits (ACLs) while keeping catch of co-occurring overfished species (e.g. yelloweye rockfish) within rebuilding ACLs. The second application was received from the West Coast Seafood Processors Association, Environmental Defense Fund, Oregon Trawl Commission, and Midwater Trawlers Cooperative for an EFP to test if and how the removal of certain trawl gear, time, and area restrictions for the Shorebased Individual Fishing Quota (IFQ) Program may impact the nature and extent of bycatch of prohibited species. This EFP is intended to allow participating limited entry groundfish bottom trawl and midwater trawl vessels more flexibility in 2018 to target pelagic rockfish species, such as widow, chilipepper, and yellowtail rockfish. The NMFS West Coast Region's Assistant Regional Administrator for Sustainable Fisheries has

made a preliminary determination that the subject EFP applications contain all the required information and warrant further consideration. Therefore, NMFS announces that the Assistant Regional Administrator for Sustainable Fisheries proposes to recommend that EFPs be issued.

DATES: Comments must be received no later than 5 p.m., local time on [*Insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by 0648-XF799, by any one of the following methods:

- E-mail: *nmfs_gf_efp2018.wcr@noaa.gov*
- Mail: Barry Thom, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Karen Palmigiano.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and would generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender would be publicly accessible. NMFS would accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments would be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Information relevant to this notice or the EFP applications are available for public review during business hours at the NMFS West Coast Regional Office at 7600 Sand Point Way NE, Seattle, WA 98115, or by requesting them via phone or the email address listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Karen Palmigiano at (206) 526-4491 or karen.palmigiano@noaa.gov.

SUPPLEMENTARY INFORMATION: This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (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.

Lingcod Pot Gear EFP

At its June 2016 meeting, the Pacific Fishery Management Council (Council) received an EFP application from TNC for the use of pot gear to target lingcod within the non-trawl RCA offshore of Washington and Oregon. An initial opportunity for public comment was provided during this meeting. At that time, the Council recommended that NMFS consider issuing the EFP for a period of two years (i.e., 2017 and 2018). The two-year duration was intended to coincide with the 2017–18 biennial harvest specifications and management measures process. However, due to unforeseen delays, NMFS was unable to issue this EFP for 2017, and is proposing to issue the EFP described below beginning in 2018. The EFP would expire no later than December 31, 2018.

In 2014, during preliminary gear testing conducted by TNC and their research partners, catch of lingcod was lower than anticipated. During testing, the gear was only fished in areas open to non-trawl groundfish fishing, which included the area seaward of the non-trawl RCA, in depths ranging from approximately 100–200 fathoms (fm) (54.7–109.4 meters). Applicants hypothesize that low catch of lingcod was primarily due to the non-trawl RCA (a depth-based area closure prohibiting fishing for lingcod with pot gear from approximately 30 fathoms to 100 fathoms), closing depths where lingcod are most commonly found (i.e., shallower than 100 fm).

Subsequently, TNC proposed and the Council recommended to NMFS an EFP which would provide an exemption to participating vessels to target lingcod with pot gear inside the non-trawl RCA off Washington and Oregon. This EFP is necessary to allow activities that are otherwise prohibited by Federal regulations. As the RCAs were implemented to reduce incidental catch of overfished species, it is not uncommon for the Council to recommend to NMFS the permitting of fishing opportunities to occur inside a RCA when the gear is highly selective, with low bycatch of non-target and overfished groundfish species.

Entanglement of humpback whales in pot gear buoy lines is a concern, particularly in the West Coast sablefish pot fishery, which is designated as a Category II fishery in the 2017 List of Fisheries (82 FR 9690, February 8, 2017) due to its occasional interactions with humpback whales; the last of which was documented in 2006. Concerns with regards to the pot gear, similar to sablefish pot gear with regards to the buoy lines, being employed in the proposed EFP are mitigated because the magnitude of the fishing effort permitted under this EFP would be minimal and occur off Oregon, where fewer documented interactions between pot gear and humpback whales has occurred. Therefore, NMFS is proposing to approve the EFP consistent with general requirements following the conclusion of the public comment period. Subsequently, NMFS would issue the actual permits for the EFP to individual participants and TNC as the entity coordinating EFP-related fishing activities as appropriate. NMFS intends to use an adaptive management approach for this EFP in which NMFS may revise requirements and protocols to improve the EFP without issuing another *Federal Register* Notice, provided that the modifications fall within the scope of the Council's original intent. Such changes 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 NOAA Administrative Order (NAO) 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. 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, if approved by NMFS, may be implemented following the public comment period. NMFS would consider comments submitted, as well as the Council's discussion at their June 2016 Council meeting, in deciding whether to approve the application as requested. NMFS may approve the application in its entirety or may make any alterations needed to achieve the goals of the EFP.

2018 Trawl Gear EFP

In September 2017, the Council received an application for an EFP from the West Coast Seafood Processors Association, Environmental Defense Fund, Oregon Trawl Commission, and Midwater Trawlers Cooperative to test if and how the removal of certain gear, time, and area restrictions for the Shorebased IFQ Program may impact the nature and extent of prohibited species bycatch, particularly salmon and eulachon. This EFP is intended to allow participating limited entry groundfish bottom trawl and midwater trawl vessels more flexibility in 2018 to target pelagic rockfish species, such as widow, chilipepper, and yellowtail rockfish. An opportunity for public testimony was provided during the Council meeting, after which the Council recommended the EFP with several changes. Specifically, the Council narrowed the number of exemptions they recommended to include in the EFP. After the Council meeting, the applicants updated their application based on the Council's recommendations and resubmitted a

final version of the application to NMFS on October 4, 2017. Copies of the final version of the application are available from NMFS. (See **ADDRESSES** for how to obtain this information).

In late 2016, industry members proposed a trawl gear EFP for 2017 (later known as the 2017 trawl gear EFP) to provide them exemptions to the minimum mesh size requirement and exemptions to the requirement to use selective flatfish trawl shoreward of the trawl RCA north of 42° North latitude (N. lat) for limited entry bottom trawl vessels. Since implementation of the 2017 trawl gear EFP in March 2017, limited entry groundfish bottom trawl vessels have been testing their new gear configurations by targeting midwater pelagic rockfish (primarily widow rockfish and yellowtail rockfish) using modified bottom trawl gear north of 42° N. lat. shoreward of the trawl RCA with minimal impacts on Chinook salmon. As of the end of October 2017, there have been 50 trips taken by 10 vessels, and they have caught a total of four Chinook salmon. Information on gear configurations has been collected, and the data would helpful information any potential modifications or elimination of current gear restrictions.

To continue collecting information on impacts to salmon and eulachon that may arise from the modification or elimination of gear, time, and area regulations, the applicants have requested a 2018 trawl gear EFP that expands upon the 2017 trawl gear EFP. The trawl gear EFP in 2018 would provide participating vessels with several exemptions regarding the required minimum mesh size, the requirement to use selective flatfish trawl gear shoreward of the trawl RCA and north of 42° N. lat., the prohibition on fishing with midwater groundfish trawl gear north of 40°10' N. lat. in all areas prior to May 15th each year, the prohibition on fishing with midwater groundfish trawl gear south of 40°10' N. lat. within the boundaries of the trawl RCA (midwater groundfish trawling would still be prohibited shoreward of the RCA and south of 40°10' N. lat.), the prohibition on bringing a new haul onboard before a previous haul is stowed,

and the prohibition on carrying and fishing more than one type of groundfish trawl gear (midwater and bottom trawl gear) on the same trip.

If approved, vessels fishing on an EFP trip with bottom trawl gear would be permitted to use any small footrope gear that meets the definition in regulations at § 660.11 shoreward of the RCA and north of 42° N. lat. similar to what is required south of 40°10' N. lat. Vessels fishing on an EFP trip with limited entry midwater trawl vessels would be permitted to fish within all areas north of 40°10' N. lat. and within the boundaries and seaward of the RCA south of 40°10' N. lat. for the duration of this EFP. These vessels would not be constrained to the primary whiting season dates. All participating groundfish bottom trawl and midwater trawl vessels on an EFP trip would be permitted to carry and fish both groundfish trawl gear types (bottom trawl and midwater trawl) on the same trip, assuming the proper declarations are made, and bring a new haul on board before a previous haul is stowed. Finally, vessels fishing on an EFP trip would not be constrained by the mesh requirements regarding size or how it is measured. Participating vessels would carry observers or use a NMFS-approved electronic monitoring system on 100-percent of trips, as is currently required in the IFQ program.

NMFS has some concerns with the potential impacts these exemptions may have on protected and prohibited species. The best available data suggests that bycatch rates of Endangered Species Act listed salmon, eulachon, and green sturgeon could increase as a result of the increased effort resulting from this EFP. However, because a targeted fishery for chilipepper, widow, and yellowtail rockfish has not existed in more than a decade and the fishery has changed a lot since this data was collected, this data may not reflect current bycatch rates resulting in its limited utility for predicting current impacts to protected and prohibited species. Thus, NMFS has been working with the applicant to develop 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's concerns, the applicants included in their application a requirement to collect bycatch information at the haul level and genetic samples on all salmon caught. Additionally, the applicants proposed and the Council recommended that all salmon caught by vessels participating in this EFP would be subject to a total salmon harvest guideline of 3,547 Chinook salmon. In addition, the Council recommend two sub-harvest guidelines to further help mitigate against potential impacts:

- Prior to May 15th—All vessels fishing on an EFP trip north of 42° N. lat. would be subject to a sub-harvest guideline of 720 Chinook salmon (out of the 3,547 Chinook salmon total harvest guideline) for this area, including seaward, within, and shoreward of the trawl RCA, from the inception of this EFP until 12:01 am on May 15th which corresponds to the start of the Primary whiting season for the Shorebased IFQ fishery. From May 15th through the end of this EFP, all EFP trips taken north of 42° N. lat. would be subject to the remainder of total harvest guideline (3,547 Chinook salmon) for the EFP.
- South of 42° N. lat.—All vessels fishing on an EFP trip south of 42° N. lat. would be subject to a sub-harvest guideline of 80 Chinook salmon (out of the 3,547 Chinook salmon harvest guideline) for this area for the duration of this EFP.

If the overall harvest guideline of 3,547 Chinook salmon for the EFP is reached, the EFP would be shut down. Additionally, if a sub-harvest guideline is reached EFP trips for which that sub-harvest guideline apply would be shut down. For example, if vessels fishing north of 42° N. lat. prior to May 15th catch more than 720 Chinook salmon, the EFP would be shut down until May 15th when it would open back up in this area under the 3,547 Chinook salmon harvest

guideline. For the area south of 42° N. lat., if any time during the EFP vessels fishing in this area catch more than 80 Chinook salmon, the EFP activity in the area south of 42° N. lat. would be shut down and would not reopen for the remainder of the EFP.

The applicants have not proposed a specific list of participating vessels, as is traditionally the case, but rather are proposing that NMFS publish a public notice to gauge interest from limited entry groundfish midwater and bottom trawl vessels. Depending on the amount of interest and where vessels may be fishing, NMFS may need to limit participation by time and area to mitigate against potential impacts. Participating vessels that enroll in the EFP would be required to declare into and out of the EFP on a monthly basis by notifying NMFS.

Information collected under the EFP could be used to support the analysis for potential new and modifications to existing gear regulations. 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. This EFP would help demonstrate what potential impacts, if any, today's fleet may have if some of the current gear, area, and time regulations are modified from what is currently in regulation.

Therefore, NMFS is proposing to approve a 2018 trawl gear EFP, covering all the exemptions stated above following the conclusion of the public comment period, review of public comment, and completion of an analysis of the potential impacts. Pending approval, NMFS would issue the permits for the EFP to the vessel owner or designated representative as the "EFP holder." 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. In addition, the applicants may request minor modifications and extensions to the EFP throughout the course of research. EFP modifications and extensions may be granted without further public notice if they are determined 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. After publication of this document in the Federal Register, the EFP, if approved by NMFS, may be implemented following the public comment period. NMFS would consider comments submitted, as well as the Council's discussion at their September 2017 Council meeting, in deciding whether to approve the application as requested. NMFS may approve the application in its entirety or may make any alterations needed to achieve the goals of the EFP.

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

Dated: November 9, 2017.

Emily H. Menashes,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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