

Rockfish Catch Handling, Option 2 - Supplementary Information

Proposed 2016 EM Program Elements for 40' to 57.5'LOA fixed gear vessels

Purpose: This document provides information to the EM Workgroup about the Alaska Region's Exempted Fishing Permit (AKR EFP) process and current regulations relevant to rockfish retention in the GOA. This document includes information for fishing activities in GOA based on the service ports identified by the EM Workgroup. If any fishing under the EM Cooperative Research project will occur in the BSAI, additional research of BSAI rockfish retention regulations will be needed.

As part of the proposed 2016 EM Program elements, two catch handling options have been identified regarding rockfish species. Option 2 requires full retention of rockfish species by utilizing an EFP to exempt participating vessels from current regulatory discard requirements. **Attachment 1** includes a detailed explanation of the AKR EFP process, and **Attachment 2** includes national (§ 600.745) and regional (§ 679.6) EFP requirements.

Major tasks to pursue an EFP Application and Permit¹:

- 1) Complete an application (Parts of the "Proposed 2016 EM program Elements for 40' to 57.5' LOA fixed gear vessels" document could serve as an EFP application with identification of a specific applicant and some additional details explaining why rockfish retention is important to the success of the cooperative research project.)
- 2) Identify relevant regulations that require exemptions (see **Attachment 3**).
- 3) Submit Application to NMFS.
- 4) Prepare NEPA document (EA or CE?).
- 5) Publish Notice in Federal Register (Prefer council consultation to occur within comment period).
- 6) Council consultation
- 7) Agency review, approval, and issue permit.

Rockfish Retention Regulations

Hook-and-line vessels targeting IFQ halibut or sablefish or other groundfish species in the GOA are subject to requirements for discard over maximum retainable amounts (MRAs) when an allocated species is closed to directed fishing (§ 679.20(e) and Table 10). The only exception to this is for incidental catch of DSR species in Southeast Outside waters (NMFS Reporting Area 650). Full retention of all DSR species caught in area 650 is required per § 679.20(j).

Vessels fishing in Southeast Outside waters are required to retain all Demersal Shelf Rockfish (DSR) species until delivery. Restrictions apply to the sale of quantities of DSR species delivered in excess of 10 percent of the IFQ Halibut and groundfish species or 1 percent of IFQ sablefish delivered per § 679.20(j). Sale amounts are equivalent to MRA limits in table 10.

Consider State regulations pertaining to the management of incidentally caught rockfish.

¹ This is a generalized list only, and the EFP application must include all information noted in NMFS AKE EPF procedures and regulations.

NMFS Alaska Region Procedures for Review and Issuance of Exempted Fishing Permits July 2015

The following explains the Sustainable Fisheries Division (SF) procedures for developing, reviewing, and issuing exempted fishing permits (EFPs). The SF is responsible for processing EFP applications. EFPs are used to allow fishing that would otherwise be prohibited under 50 CFR part 679. Regulations authorizing EFPs are at 50 CFR 600.745 and 679.6. Any procedures for the NEPA documents in this document should be double checked against the latest regional procedures and letters/memos found on the Examples intranet page. Examples of EFP documents may be found in the G:/FMGROUP/EFP directory.

Project Development

SF staff should encourage the applicant to take the following actions before submitting an EFP application for review.

1. Review the Alaska Region website at <http://www.fakr.noaa.gov/ram/efp.htm>.
2. Review the EFP regulations at § 679.6, accessible at <http://www.fakr.noaa.gov/regs/679a6.pdf>.
3. If the applicant has not already done so, contact the AFSC, Steve Ignell, Deputy Director of the Alaska Fisheries Science Center (AFSC) and Jennifer Ferdinand, Planning Officer, to determine the appropriate staff that can give advice on the experimental design.
4. Work with the AFSC and any appropriate SF staff to complete an experimental design that can be approved by the AFSC.
5. Work with the Observer Program (Chris Rilling) and SF Inseason (Mary Furuness and Jennifer Watson) and Catch Accounting (Jennifer Mondragon) to determine monitoring and data handling needs.
6. Work with OLE and GCAK Enforcement to determine if there may be any enforcement concerns.
7. Check with PR on any ESA concerns that may be initially apparent.
8. Address the list of required elements in § 679.6(b) in developing the application.
9. Once the experimental design is completed and the application drafted in accordance with § 679.6(b), the applicant may submit the application to NMFS.
10. NMFS staff should make it clear to the applicant that the process may take up to 6 months from receipt of the application before issuance of the EFP due to Council consultation requirements (§§ 679.6(c)(2) and 600.745(b)(3)) and NEPA.

Review Process

The review process is described in § 679.6(c). The following are steps taken by SF to meet the review requirements in the regulations and to get the application to the point of consultation with the Council.

1. SF reviews the application to ensure it is complete. A checklist may be used to facilitate review. A blank checklist is located at G:\FMGROUPEFP\application checklist.doc.
2. SF initiates appropriate NEPA analysis. If an EA is required, be sure to plan for the analytical time. If the applicant is providing the Draft EA, inform the applicant that it may take 1 to 2 months for SF to review and approve a completed EA. The EA's must meet the standards from the NEPA coordinator and agency.
3. SF writes memo for RA's signature to request the AFSC review and approval of the experimental design. Submit the application with the AFSC review memo to the AFSC (Doug Demaster and Jennifer Ferdinand) only after key AFSC staff have indicated that the draft application is sufficiently developed that AFSC staff are able to complete internal review in 30 days or less. In some cases, the application description of the action changes during the review process and the NEPA document may have the most accurate description of the action. In this case, the EA should be provided to the AFSC with the application, explaining in the cover memo that the EA has the latest description of the project. Jennifer Ferdinand should be copied on the memo. To facilitate the review, email the documents to John Clary. He will coordinate the review with the division chiefs.
4. If the project does not require an EA, make sure the application is revised by the applicant per the AFSC's recommendations before beginning the public review process. This ensures a complete description of the project is available for Council and USCG review.
5. Contact the Council to see which Council meeting would be appropriate for consultation and to get the EFP on the Council's meeting schedule.
6. Determine if there are any ESA concerns and work with PR to determine if and what level of consultation may be needed.
7. Complete the NEPA document. Place a Comment Period end date on the first page of the document that matches the comment period end date on the Federal Register Notice. Provide to Gretchen Harrington, Regional NEPA Coordinator, for review. She may or may not have time to review it before the Council meeting, but try to give her a couple weeks. If an EA is prepared, strive to incorporate her comments on the EA before submitting to the Council and

opening to the public process. Some GCAK attorneys may want to review the EA before doing the Federal Register notice under 9. This may need to be accounted for in the scheduling of reviews.

8. Submit any draft EA, any ESA formal consultation (biological opinion), if available, and the application to the Council for consultation. This accompanied by a letter requesting their review of the application at a Council meeting. If a draft EA was prepared, note on the cover of the draft EA that public comments are due by the last day of the Council meeting when the EFP is considered. Note if an EA is included, note if the more complete description of the action is in the EA rather than in the original application.
9. Complete a letter to the USCG and the Alaska Department of Fish and Game with the application and any EA for their review, as required by § 600.745.
10. ~~Complete the CZM letter.~~ (As of July 1, 2011, the Coastal Zone Management Act Federal consistency provision in section 307 no longer applies in Alaska.)
11. Complete the IQA predisemination review before the Federal Register notice is published. This is signed by the SF ARA.
12. Prior to sending the FR notice to NMFS.regs@noaa.gov, have the FR notice reviewed by GC. Request an email confirmation that GC has reviewed the FR Notice and that they approve of the notice.
13. Ideally, at least five weeks before the Council meeting when the EFP will be reviewed, provide the Federal Register Notice of Receipt of an Application for an EFP, the Council letter (8), and USGC and ADF&G letters (9) to the RA for signature. This is to allow for the minimum 30 day public notice period. Use a blue sheet to get his/her signoff of the FR notice. Legal review should not be needed at this time because no decisions are being made, only a notice of receipt and intent to issue the EFP. You may want to check with your GCAK attorney to confirm as we have had differing opinions on this point.

15-45 day comment periods are required for EFPs. We usually aim for 30 days. Include a public comment period in the FR Notice that would end on the last day of the Council meeting or within 30 days of publication, whichever is the longer time period. You may provide a date certain in the Federal Register notice to end the comment period rather than depending on the Federal Register inserting a date based on publication date. Public comments on the EFP application will be taken through the Council meeting and directly to NMFS. Work with Admin Records to set up an email account for comments to be sent and to get the XRIN to use on the FR notice. Directions to get an XRIN are on the intranet examples site for SF.

Follow the procedures in the memo from Dunnigan on submitting Federal Register notices for EFPs dated April 22, 2004 (Attached). (Note: The NEPA section of this memo is poorly described and may eventually be replaced by a national NEPA Procedures policy.). The notice is sent to NMFS.regs@noaa.gov for publication. They will do no editing, so make sure it is perfect. Give them at least a week to process.

14. Instructions for transmitting EFP application, etc. to Council. Prior to the Council's public mailing of information for the Council meeting, email a PDF of the signed cover letter from the RA to the Chairman, signed AFSC review letter, Application for EFP and Research Plan. The FR Notice does not need to be published prior to emailing these materials to the Council, because no decision is made at this time. If any additional formal signoff letters or exemptions from regulations of other agencies exist, it may be appropriate to include them in the emails. For example, any letter potentially exempting the applicant from IPHC regulations should be included.
15. Other transmittals. The USCG and ADFG letter are also mailed prior to the Council meeting, with a copy of the Application for an EFP. A CZM letter is no longer provided, until the State renews the CZM process. The CZM letter provides the State the opportunity to review the action if they choose. No enclosure is necessary with the CZM letter.
16. Once the draft EA is cleared by AKR NEPA coordinator, Gretchen, and the letters announcing receipt of the draft EA is sent, have the EA and EFP application posted on the NMFS website. If time permits and you have completed the initial review with the Regional NEPA Coordinator, send an advanced review copy of the EA to NOAA PPI as described in 3. below. You may need to work with OMI to establish an FTP site for them to download the document. Email to HDQTRs is usually limited to 5 mb, and you should confirm that the EA was received. This advanced review will allow you to move the package quickly once you are ready to issue the EFP.

Council Consultation

Someone from SF or from the AFSC should present the EA to the Council if one was prepared, and the applicant should be present to support their application for the Council. NMFS will receive a recommendation from the Council either in support of issuing or not in support of issuing the EFP. It is also possible that the EFP will fall off the Council's agenda, and there will be no recommendation. If it is not in support and NMFS decides not to issue the EFP, NMFS will need to contact the applicant and explain why the EFP will not be granted, following procedures described in §§ 679.6(d) and 600.745(b)(3). If the Council's recommendation supports the EFP and

NMFS decides to issue the permit, then the steps in the next section are to be followed.

Issuing the EFP

1. Once NMFS decides to issue the EFP, complete the EA and FONSI, incorporating any comments received on the EA.
2. Forward the FONSI and final EA to the Alaska Region NEPA Coordinator (Steve Davis) for review and approval. (This should be a quick review if he already saw it earlier.)
3. Once you have written approval (email or memo) from the Alaska Region NEPA Coordinator, provide the EA and FONSI to NOAA PPI (Steve Kokkinakis). Let them know your time frame and expect at least a three day review period. Concurrently provide the EA and FONSI to GCAK. Make sure the two review groups are aware of any substantive changes recommended.
4. Concurrent with the NEPA review, draft the EFP and circulate to those who may be interested, such as Office of Law Enforcement (OLE), SF inseason management, Observer Program, AFSC, and the applicant.
5. After working out the details of the EFP and if necessary, concurrent with NOAA PPI review, provide the entire package to GCAK for their approval. The package should include:
 - a. The EFP
 - b. The cover letter to the applicant transmitting the EFP
 - c. An information memo to the record from the RA for the EFP (including determination for applicable laws. Include the dates of the CZM letter sent previously and the IQA form.)
 - d. EA
 - e. FONSI
 - f. To all interested parties letter
 - g. FONSI transmittal memo
 - h. Attorney Review Memo
 - i. Blue sheet (sign off may include OLE and PR depending on the nature of the project.)
6. After GCAK approves the package (signed ARM), have the RA sign the FONSI and FONSI transmittal memo, send a PDF of these and the Word version of the "To all interested parties" letter to NOAA PPI for concurrence. If any changes were made to the EA since PPI's review, you also may need to send the EA. Allow 3 days for the NEPA concurrence, but NOAA PPI may be able to work with you if you need it sooner. Their concurrence will be the NOAA NEPA Coordinator's signature on the concurrence line on the FONSI transmittal memo.
7. While waiting for the PDF of the signed FONSI transmittal memo with their concurrence from NOAA PPI, have the applicant sign the EFP.

8. Give the RA the applicant-signed EFP, Information memo, a copy of the NOAA PPI concurrence PDF, and letter to the applicant. Have him/her sign the EFP, Information memo, letter to the applicant and blue concurrence sheet.
9. Mail a copy of the signed EFP and the original cover letter to applicant and email the applicant a PDF of the signed permit and letter. Records gets the original signed permit and a copy of the cover letter.
10. Give copies of the EFP to OLE, Observer program, USCG, SF inseason, John Clary (AFSC), and to anyone else that may need it, such as any AFSC staff that are working on the project. You may do this by sending PDFs by email.
11. When the vessels participating in the EFP project are identified, provide the vessel information to OLE, USGC, Observer program, John Clary (AFSC), and SF inseason

Modified Permits

The process of modifying a permit will depend on the nature of the modification. If the modification was accounted for in the NEPA analysis and is mentioned in the EFP, such as extending the time period for an additional year, then only a new modified permit and cover letter to the applicant should be necessary with notification to OLE and SF inseason. If the modification was not covered in the NEPA document, then the entire process should be followed for the issuance of an EFP, including application, Council consultation and NEPA procedures.

Title 50: Wildlife and Fisheries

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

Subpart H—General Provisions for Domestic Fisheries

§600.745 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity.* Nothing in this part is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities on board a scientific research vessel in the EEZ are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific activity. The Regional Administrator or Director will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a Letter of Acknowledgment. This Letter of Acknowledgment is separate and distinct from any permit or consultation required by the MMPA, the ESA, or any other applicable law. The Regional Administrator or Director will include text in the Letter of Acknowledgment informing the applicant that such a permit may be required and should be obtained from the agency prior to embarking on the activity. If the Regional Administrator or Director, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Administrator or Director will inform the applicant as soon as practicable and in writing. In making this determination, the Regional Administrator, Director, or designee shall consider: the merits of the individual proposal and the institution(s) involved; whether the proposed activity meets the definition of scientific research activity; and whether the vessel meets all the requirements for a scientific research vessel. The Regional Administrator or Director may also make recommendations to revise the research plan to ensure the activity will be considered to be scientific research activity or recommend the applicant request an EFP. The Regional Administrator or Director may designate a Science and Research Director, or the Assistant Regional Administrator for Sustainable Fisheries, to receive scientific research plans and issue Letters of Acknowledgment. In order to facilitate identification of the activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the Letter of Acknowledgment on board the scientific research vessel and to make it available for inspection upon the request of any authorized officer. It is recommended that for any scientific research activity, any fish, or parts thereof, retained pursuant to such activity be accompanied, during any ex-vessel activities, by a copy of the Letter of Acknowledgment. Activity conducted in accordance with a scientific research plan acknowledged by such a Letter of Acknowledgment is presumed to be scientific research activity. An authorized officer may overcome this presumption by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Exempted fishing—(1) General.* A NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. Compensation fishing must be conducted under an EFP if the activity would otherwise be prohibited by applicable regulations unless the activity is specifically authorized under an FMP or a scientific research permit. Conservation engineering that does not meet the definition of scientific research activity, but does meet the definition of fishing must be conducted under an EFP if the activity would otherwise be prohibited by applicable regulations. Data collection designed to capture and land quantities of fish for

product development, market research, and/or public display must be permitted under exempted fishing procedures. An EFP exempts a vessel only from those regulations specified in the EFP. All other applicable regulations remain in effect. The Regional Administrator or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Administrator or Director to determine the applicable fee.

(2) *Application.* An applicant for an EFP shall submit a completed application package to the appropriate Regional Administrator or Director, as soon as practicable and at least 60 days before the desired effective date of the EFP. Submission of an EFP application less than 60 days before the desired effective date of the EFP may result in a delayed effective date because of review requirements. The application package must include payment of any required fee as specified by paragraph (b)(1) of this section, and a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.

(iv) For each vessel to be covered by the EFP, as soon as the information is available and before operations begin under the EFP:

(A) A copy of the USCG documentation, state license, or registration of each vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

(vi) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(vii) The signature of the applicant.

(viii) The Regional Administrator or Director, as appropriate, may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application or an application for which the appropriate fee has not been paid will not be considered until corrected in writing and the fee paid. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested.

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Administrator or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Administrator or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the FEDERAL REGISTER with a brief description of the proposal. Interested persons will be given a 15- to 45-day opportunity to comment on the notice of receipt of the EFP application. In addition, comments may be requested during public testimony at a Council meeting. If the Council intends to take comments on EFP applications at a Council meeting, it must include a statement to this effect in the Council meeting notice and meeting agenda. Multiple applications for EFPs may be published in the same FEDERAL REGISTER document and may be discussed under a single Council agenda item. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Administrator or Director will also forward copies of the application to the Council(s), the U.S. Coast Guard, and the appropriate fishery management agencies of affected states, accompanied by the following information:

(A) The effect of the proposed EFP on the target and incidental species, including the effect on any TAC.

(B) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

(ii) If the application is complete and warrants additional consultation, the Regional Administrator or Director may consult with the appropriate Council(s) concerning the permit application during the period in which comments have been requested. The Council(s) or the Regional Administrator or Director shall notify the applicant in advance of any public meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving a complete application, including all required analyses and consultations (e.g., NEPA, EFH, ESA and MMPA), and having received responses from the public, the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Administrator or Director shall issue the EFP or notify the applicant in writing of the decision to deny the EFP and the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, threatened or endangered species, or EFH; or

(C) Issuance of the EFP would have economic allocation as its sole purpose (other than compensation fishing); or

(D) Activities to be conducted under the EFP would be inconsistent with the intent of this section, the management objectives of the FMP, or other applicable law; or

(E) The applicant has failed to demonstrate a valid justification for the permit; or

(F) The activity proposed under the EFP could create a significant enforcement problem.

(iv) The decision of a Regional Administrator or Director to grant or deny an EFP is the final action of NMFS. If the permit, as granted, is significantly different from the original application, or is denied, NMFS may publish notification in the FEDERAL REGISTER describing the exempted fishing to be conducted under the EFP or the reasons for denial.

(v) The Regional Administrator or Director should attach, as applicable, terms and conditions to the EFP, consistent with the purpose of the exempted fishing and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

(A) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.

(B) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.

(C) A citation of the regulations from which the vessel is exempted.

(D) The time(s) and place(s) where exempted fishing may be conducted.

(E) The type, size, and amount of gear that may be used by each vessel operated under the EFP.

(F) Whether observers, a vessel monitoring system, or other electronic equipment must be carried on board vessels operating under the EFP, and any necessary conditions, such as predeployment notification requirements.

(G) Data reporting requirements necessary to document the activities, including catches and incidental catches, and to determine compliance with the terms and conditions of the EFP and established time frames and formats for submission of the data to NMFS.

(H) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.

(I) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures as set out in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

(4) *Acknowledging permit conditions.* Upon receipt of an EFP, the permit holder must date and sign the permit, and retain the permit on board the vessel(s). The permit is not valid until signed by the permit holder. In signing the permit, the permit holder:

(i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations; and

(ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization and revocation by the Regional Administrator or Director.

(5) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is valid for no longer than 1 year. EFPs may be renewed following the application procedures in this section.

(6) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(7) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer. Any fish, or parts thereof, retained pursuant to an EFP issued under this paragraph must be accompanied, during any ex-vessel activities, by a copy of the EFP.

(8) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(9) *Sanctions.* Failure of a permittee to comply with the terms and conditions of an EFP may be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement purposes will be governed by 15 CFR part 904, subpart D.

(c) *Reports.* (1) NMFS requests that persons conducting scientific research activities from scientific research vessels submit a copy of any report or other publication created as a result of the activity, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director and Regional Administrator or Director.

(2) Upon completion of the activities of the EFP, or periodically as required by the terms and conditions of the EFP, persons fishing under an EFP must submit a report of their catches and any other information required, to the appropriate Regional Administrator or Director, in the manner and within the time frame specified in the EFP, but no later than 6 months after concluding the exempted fishing activity. Persons conducting EFP activities are also requested to submit a copy of any publication prepared as a result of the EFP activity.

(d) *Exempted educational activities—(1) General.* A NMFS Regional Administrator or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The trade, barter or sale of fish taken under this authorization is prohibited. The decision of a Regional Administrator or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Administrator or Director in

accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) *Application.* An applicant for an exempted educational activity authorization shall submit to the appropriate Regional Administrator or Director, at least 15 days before the desired effective date of the authorization, a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.

(iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.

(v) The scope and duration of the activity.

(vi) For each vessel to be covered by the authorization:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(vii) The species and amounts expected to be caught during the exempted educational activity, and any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

(viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(ix) The signature of the applicant.

(x) The Regional Administrator or Director may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a determination whether the application contains all of the required information, is consistent with the goals, objectives, and requirements of the FMP or regulations and other applicable law, and constitutes a valid exempted educational activity. The applicant will be notified in writing of the decision within 5 working days of receipt of the application.

(ii) The Regional Administrator or Director should attach, as applicable, terms and conditions to the authorization, consistent with the purpose of the exempted educational activity and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

(A) The maximum amount of each regulated species that may be harvested.

(B) A citation of the regulations from which the vessel is being exempted.

(C) The time(s) and place(s) where the exempted educational activity may be conducted.

(D) The type, size, and amount of gear that may be used by each vessel operated under the authorization.

(E) Data reporting requirements necessary to document the activities and to determine compliance with the terms and conditions of the exempted educational activity.

(F) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.

(G) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activities as a condition of the authorization.

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), persons, species, and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

(4) *Duration.* Unless otherwise specified, authorization for an exempted educational activity is effective for no longer than 1 year, unless revoked, suspended, or modified. Authorizations may be renewed following the application procedures in this section.

(5) *Alteration.* Any authorization that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* Authorizations issued under this paragraph (d) are not transferable or assignable.

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued, or be in the possession of at least one of the persons identified in the authorization, who must be present while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of “fishing,” despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal. Any fish, or parts thereof, retained pursuant to an authorization issued under this paragraph must be accompanied, during any ex-vessel activities, by a copy of the authorization.

(e) *Observers.* NMFS-sanctioned observers or biological technicians conducting activities within NMFS-approved sea sampling and/or observer protocols are exempt from the requirement to obtain an EFP. For purposes of this section, NMFS-sanctioned observers or biological technicians include NMFS employees, NMFS observers, observers who are employees of NMFS-contracted observer providers, and observers who are employees of NMFS-permitted observer providers.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 74 FR 42794, Aug. 25, 2009]

§679.6 Exempted fisheries.

(a) *General.* For limited experimental purposes, the Regional Administrator may authorize, after consulting with the Council, fishing for groundfish or fishing for Arctic fish in the Arctic Management Area in a manner that would otherwise be prohibited. No exempted fishing may be conducted unless authorized by an exempted fishing permit issued by the Regional Administrator to the participating vessel owner in accordance with the criteria and procedures specified in this section. Exempted fishing permits will be issued without charge and will expire at the end of a calendar year unless otherwise provided for under paragraph (e) of this section.

(b) *Application.* An applicant for an exempted fishing permit shall submit to the Regional Administrator, at least 60 days before the desired effective date of the exempted fishing permit, a written application including, but not limited to, the following information:

(1) The date of the application.

(2) The applicant's name, mailing address, and telephone number.

(3) A statement of the purpose and goal of the experiment for which an exempted fishing permit is needed, including a general description of the arrangements for disposition of all species harvested under the exempted fishing permit.

(4) Technical details about the experiment, including:

(i) Amounts of each species to be harvested that are necessary to conduct the experiment, and arrangement for disposition of all species taken.

(ii) Area and timing of the experiment.

(iii) Vessel and gear to be used.

(iv) Experimental design (e.g., sampling procedures, the data and samples to be collected, and analysis of the data and samples).

(v) Provision for public release of all obtained information, and submission of interim and final reports.

(5) The willingness of the applicant to carry observers, if required by the Regional Administrator, and a description of accommodations and work space for the observer(s).

(6) Details for all coordinating parties engaged in the experiment and signatures of all representatives of all principal parties.

(7) Information about each vessel to be covered by the exempted fishing permit, including:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and master.

(iii) USCG documentation, state license, or registration number.

(iv) Home port.

(v) Length of vessel.

(vi) Net tonnage.

(vii) Gross tonnage.

(8) The signature of the applicant.

(9) The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. Any application that does not include all necessary information will be considered incomplete. An incomplete application will not be considered to be complete until the necessary information is provided in writing. An applicant for an exempted fishing permit need not be the owner or operator of the vessel(s) for which the exempted fishing permit is requested.

(c) *Review procedures.* (1) The Regional Administrator, in consultation with the Alaska Fishery Science Center, will review each application and will make a preliminary determination whether the application contains all the information necessary to determine if the proposal constitutes a valid fishing experiment appropriate for further consideration. If the Regional Administrator finds any application does not warrant further consideration, the applicant will be notified in writing of the reasons for the decision.

(2) If the Regional Administrator determines any application is complete and warrants further consideration, he or she will initiate consultation with the Council by forwarding the application to the Council. The Council's Executive Director shall notify the applicant of a meeting at which the Council will consider the application and invite the applicant to appear in support of the application, if the applicant desires. If the Regional Administrator initiates consultation with the Council, NMFS will publish notification of receipt of the application in the FEDERAL REGISTER with a brief description of the proposal.

(d) *Notifying the applicant.* (1) The decision of the Regional Administrator, after consulting with the Council, to grant or deny an exempted fishing permit is the final action of the agency. The Regional Administrator shall notify the applicant in writing of the decision to grant or deny the exempted fishing permit and, if denied, the reasons for the denial, including:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with the application.

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect living marine resources, including marine mammals and birds, and their habitat in a significant way.

(iii) Activities to be conducted under the exempted fishing permit would be inconsistent with the intent of this section or the management objectives of the FMP.

(iv) The applicant has failed to demonstrate a valid justification for the permit.

(v) The activity proposed under the exempted fishing permit could create a significant enforcement problem.

(vi) The applicant failed to make available to the public information that had been obtained under a previously issued exempted fishing permit.

(vii) The proposed activity had economic allocation as its sole purpose.

(2) In the event a permit is denied on the basis of incomplete information or design flaws, the applicant will be provided an opportunity to resubmit the application, unless a permit is denied because exempted fishing would detrimentally affect marine resources, be inconsistent with the management objectives of the FMP, create significant enforcement problems, or have economic allocation as its sole purpose.

(e) *Terms and conditions.* The Regional Administrator may attach terms and conditions to the exempted fishing permit that are consistent with the purpose of the experiment, including, but not limited to:

(1) The maximum amount of each species that can be harvested and landed during the term of the exempted fishing permit, including trip limitations, where appropriate.

(2) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the exempted fishing permit.

(3) The time(s) and place(s) where exempted fishing may be conducted.

(4) The type, size, and amount of gear that may be used by each vessel operated under the exempted fishing permit.

(5) The condition that observers be carried aboard vessels operated under an exempted fishing permit.

(6) Reasonable data reporting requirements.

(7) Such other conditions as may be necessary to assure compliance with the purposes of the exempted fishing permit and consistency with the FMP objectives.

(8) Provisions for public release of data obtained under the exempted fishing permit.

(f) *Effectiveness.* Unless otherwise specified in the exempted fishing permit or superseding notification or regulation, an exempted fishing permit is effective for no longer than 1 calendar year, but

may be revoked, suspended, or modified during the calendar year. Exempted fishing permits may be renewed following the application procedures in paragraph (b) of this section.

(g) *Recordkeeping and reporting requirements.* In addition to the recordkeeping and reporting requirements in this section, the operator or manager must comply with requirements at §679.5(a) through (k).

[61 FR 31230, June 19, 1996, as amended at 64 FR 61981, Nov. 15, 1999; 67 FR 4148, Jan. 28, 2002; 67 FR 22017, May 2, 2002; 74 FR 56745, Nov. 3, 2009]

Federal Regulations related to retention or discard of rockfish in the GOA groundfish fisheries off Alaska

This list of regulations is prepared to answer questions from the EM working group about regulations that may need to be exempted or addressed in an EFP supporting a requirement for retention of rockfish by vessels participating in the pre-implementation EM selection pool.

§ 679.7 Prohibitions

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Groundfish of the GOA and BSAI

* * *

(16) Retention of groundfish bycatch species. Exceed the maximum retainable groundfish amount established under § 679.20(e).

* * *

(f) IFQ fisheries

* * *

(8) Discard.

(i) In the GOA.

(A) Rockfish that are taken when IFQ halibut or IFQ sablefish are on board unless rockfish are required to be discarded under subpart B of this part.

(B) Pacific cod that are taken when IFQ halibut or IFQ sablefish are on board unless Pacific cod are required to be discarded under subpart B of this part, or Pacific cod are not authorized to be retained under subpart A of this part.

* * *

§ 679.20 General limitations

* * *

(d) Fishery closures.

(1) Directed fishing allowance.

* * *

(iii) Directed fishing closure

(B) Retention of incidental species. Except as described in § 679.20(e)(3)(iii), if directed fishing for a target species or species group is prohibited, a vessel may not retain that incidental species in an amount that exceeds the maximum retainable amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

(2) Groundfish as prohibited species closure. When the Regional Administrator determines that the TAC of any target species specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the Federal Register requiring that target species be treated in the same manner as a prohibited species, as described under § 679.21(b), for the remainder of the year.

* * *

(e) Maximum retainable amounts (MRA).

(1) Proportion of basis species. The maximum retainable amount of an incidental catch species is calculated as a proportion of the basis species retained on board the vessel using:

(i) The retainable percentages in Table 10 to this part for the GOA species categories (except the Rockfish Program fisheries, which are described in Table 30 to this part for the Rockfish Program fisheries); and

(ii) Table 11 to this part for the BSAI species categories. § 679.20 General limitations 50 CFR 679b20.docx § 679.20 General limitations Page 16 of 18 Updated April 6, 2015

* * *

(j) Full retention of Demersal Shelf Rockfish (DSR) in the Southeast Outside District of the GOA (SEO)

(1) Retention and landing requirements. The operator of a catcher vessel that is required to have a Federal fisheries permit, or that harvests IFQ halibut with hook and line or jig gear, must retain and land all DSR that is caught while fishing for groundfish or IFQ halibut in the SEO.

(2) Disposal of DSR when closed to directed fishing. When DSR is closed to directed fishing in the SEO, the operator of a catcher vessel that is required to have a Federal fisheries permit under § 679.4(b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), must dispose of DSR retained and landed in accordance with paragraph (j)(1) of this section as follows:

(i) A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 10 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than sablefish, that are landed during the same fishing trip.

(ii) A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 1 percent of the aggregate round weight equivalent of IFQ sablefish that are landed during the same fishing trip.

(iii) Amounts of DSR retained by catcher vessels under paragraph (j)(1) of this section that are in excess of the limits specified in paragraphs (j)(2)(i) and (ii) may be put to any use, including but not limited to personal consumption or donation, but must not enter commerce through sale, barter, or trade.