

Dated: January 11, 2017.

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Office of Protected Resources, National  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XF160**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Application for an Exempted Fishing Permit

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

**ACTION:** Notice; receipt of application to renew an exempted fishing permit.

**SUMMARY:** This notice announces receipt of an application from the Alaska Seafood Cooperative and co-applicants to renew exempted fishing permit (EFP) 2016-01 as modified on January 10, 2017. NMFS announced receipt of the application for EFP 2016-01 on January 25, 2016. NMFS issued EFP 2016-01 on May 6, 2016, and modified the EFP on January 10, 2017. If granted, this renewal would extend the expiration date of modified EFP 2016-01 from April 30, 2017, to December 31, 2017. The objective of EFP 2016-01 is to allow the applicants to remove halibut from a trawl codend on the deck, and release those halibut back to the water in a timely manner to increase survivability. Under the EFP, halibut are sampled by NMFS-trained observers for length and physical condition using standard International Pacific Halibut Commission halibut mortality assessment methods. The objectives of EFP 2016-01 are to (1) test methods for sorting halibut on deck for suitability as an allowable fish handling mode for the non-pollock catcher/processor trawl fisheries (Amendment 80, community development quota, and trawl limited access) in the Bering Sea and Aleutian Islands under an eventual regulated program; and (2) simplify and improve on elements that worked under a 2015 deck sorting EFP project. This experiment has the potential to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982.

**DATES:** Comments on this EFP application must be submitted to NMFS on or before February 7, 2017. The

North Pacific Fishery Management Council (Council) will consider the application at its meeting from January 30 through February 6, 2017, in Seattle, WA.

**ADDRESSES:** The Council meeting will be held at the Renaissance Seattle Hotel, 515 Madison Street, Seattle, WA 98104. The agenda for the Council meeting is available at <http://www.npfmc.org>. You may submit comments on this document, identified by NOAA-NMFS-2017-0006, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0006](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0006), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian, Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

**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. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the EFP application, modified EFP 2016-01, and the basis for a categorical exclusion under the National Environmental Policy Act are available from the Alaska Region, NMFS Web site at <http://alaska.fisheries.noaa.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Brandee Gerke, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP), which the Council prepared under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the BSAI groundfish fisheries appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at § 600.745(b) and § 679.6 allow the NMFS Regional Administrator to

authorize, for limited experimental purposes, fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982. The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary).

#### Background

Regulations implemented by the IPHC allow Pacific halibut to be commercially harvested by the directed North Pacific longline fishery. Halibut is a prohibited species in the groundfish fishery, requiring immediate return to the sea with a minimum of injury. Halibut caught incidentally by catcher/processors in the nonpelagic trawl groundfish fisheries must be weighed on a NMFS-approved scale, sampled by observers, and returned to the ocean as soon as possible. The Council establishes annual maximum halibut bycatch allowances and seasonal apportionments adjusted by an estimated halibut discard mortality rate (DMR) for groundfish fisheries. The DMRs are based on the best information available, including information contained in the annual Stock Assessment and Fishery Evaluation report, available at <http://www.alaskafisheries.noaa.gov/>. NMFS approves the halibut DMRs developed and recommended by the IPHC and the Council for the BSAI groundfish fisheries for use in monitoring the halibut bycatch allowances and seasonal apportionments.

Directed fishing in a groundfish fishery closes when the halibut mortality apportionment for the fishery is reached, even if the target species catch is less than the seasonal or annual quota for the directed fishery. In the case of the Bering Sea flatfish fishery, seasons have been closed before fishery quotas have been reached to prevent the fishery from exceeding the halibut mortality apportionment.

With the implementation of Amendment 80 to the FMP on September 14, 2007 (72 FR 52668), halibut mortality apportionments were established for the Amendment 80

sector and for Amendment 80 cooperatives. Amendment 80 is a catch share program that allocates several BSAI non-pollock trawl groundfish fisheries (including the flatfish fishery) among fishing sectors, and facilitates the formation of harvesting cooperatives in the non-American Fisheries Act trawl catcher/processor sector. Though halibut mortality apportionments provide Amendment 80 cooperatives more flexibility to use available mortality, halibut mortality continues to constrain fishing in some Amendment 80 fisheries. Therefore, this sector is actively exploring ways to continue to reduce halibut mortality.

Before incidentally caught halibut are returned to the sea, at-sea observers must estimate halibut and groundfish catch amounts. Regulations in 50 CFR part 679 assure that observer estimates of halibut and groundfish catch are credible and accurate, and that potential bias is minimized. For example, NMFS requires that all catch be made available for sampling by an observer; prohibits tampering with observer samples; prohibits removal of halibut from a codend, bin, or conveyance system prior to being observed and counted by an at-sea observer; and prohibits fish (including halibut) from remaining on deck unless an observer is present.

In 2009 and 2012, halibut mortality experiments were conducted by members of the Amendment 80 sector under EFP 09–02 (74 FR 12113, March 23, 2009) and EFP 12–01 (76 FR 70972, November 16, 2011). By regulation, all catch including halibut is moved across a flow scale below deck before the halibut is returned to the sea. Halibut mortality increases with increased handling and time out of water. Under the 2009 and 2012 EFPs, experimental methods for sorting catch on a vessel's deck allowed halibut to be returned to the sea in less time, with less handling relative to halibut routed below deck and over the flow scale. The halibut mortality during flatfish fishing under the 2009 and 2012 EFPs was estimated to be approximately 17 metric tons (mt) and 10.8 mt, respectively, less than the amounts estimated from the DMR for this fishery. The reduced halibut mortality under the 2009 and 2012 EFPs is attributed to the improved condition of halibut through reduced handling and time out of water.

In 2015, test fishing under EFP 2015–02 (80 FR 3222, January 22, 2015) expanded on results of the 2009 and 2012 EFPs to explore the feasibility of deck sorting halibut in additional fisheries, on more vessels, and during a longer interval of time during the fishing season. The primary objective

was to reduce halibut mortality in the Amendment 80 groundfish fisheries in 2015. Fishing under the EFP began in May and continued through November. The most prominent result from the 2015 EFP was that substantial halibut mortality savings were achieved from deck sorting on catcher/processors operating in Bering Sea non-pelagic trawl fisheries. The 2015 EFP is estimated to have saved 175 mt of halibut. For the nine vessels that participated in the 2015 EFP, all but one achieved mortality rates in the range of 41 percent to 53 percent, compared to the standard mortality rate of 80 percent in the Bering Sea flatfish fisheries without deck sorting (average across target fisheries of interest for the 2015 EFP).

Test fishing under EFP 2016–01 from May through November 2016 resulted in more participating vessels over more fisheries and yielded greater halibut savings relative to prior years. Twelve boats participated in test fishing under EFP 2016–01. In prior deck sorting EFPs, test fishing primarily occurred in the flathead sole and arrowtooth flounder fisheries. In 2016, test fishing expanded to fisheries for yellowfin sole, Pacific cod, Pacific ocean perch, and Atka mackerel to a much larger extent than in prior years. Based on preliminary results, EFP 2016–01 is estimated to have saved 288 mt of halibut in 2016. Though modified EFP 2016–01 is valid through April 30, 2017, no halibut savings data from 2017 are available to report at this time.

Through the course of EFP fishing in 2016, NMFS and the EFP participants identified modifications to EFP 2016–01 that would improve the effectiveness of the EFP and reduce the burden on industry to participate in the EFP. For example, EFP 2016–01 required participating vessels to carry three observers to collect data during EFP fishing. Through the course of the year, it became apparent that two observers could sufficiently collect the requisite data for EFP hauls. As a result, NMFS subsequently modified EFP 2016–01 to make it optional for participating vessels to carry more than two observers on EFP trips. Under modified EFP 2016–01 (see **ADDRESSES**) vessel operators may opt to carry more than two observers to maintain the pace at which fish are run through the factory while halibut are being sorted and sampled by an observer on deck or they may carry two observers with the condition that fish may not be run into the factory while the observer is on deck sampling the sorted halibut. Additional modifications to EFP 2016–01 included (a) changes in observer sampling

methods designed to increase consistency of observer sampling for the EFP with other, routine observer sampling in the fisheries; (b) changes to the persons named on the EFP as designated representatives; and (c) the addition of new vessels to the EFP.

### Proposed Action

On January 10, 2017, the Alaska Seafood Cooperative (AKSC), an Amendment 80 cooperative, submitted an application to renew modified EFP 2016–01 through the end of 2017 to continue to build on the information collected in prior deck sorting EFPs and further reduce halibut mortality in the Amendment 80, community development quota (CDQ), and trawl limited access sectors. The proposed action would extend the effective date of modified EFP 2016–01 (see **ADDRESSES**) from April 30, 2017 to December 31, 2017. No other changes to modified EFP 2016–01 are proposed.

The renewed EFP would allow halibut to continue to be sorted, sampled, and released prior to being weighed on a flow scale, to achieve the experimental objectives of modified EFP 2016–01 and reduce halibut mortality. Halibut prohibited species catch (PSC) mortality for vessels engaged in experimental fishing would not exceed the 2017 halibut PSC mortality apportionments set out in Table 14 of the Final 2016 and 2017 Harvest Specifications (available at [https://alaskafisheries.noaa.gov/sites/default/files/16\\_17bsaitable14.pdf](https://alaskafisheries.noaa.gov/sites/default/files/16_17bsaitable14.pdf)). Participants request no additional groundfish or halibut quota as part of this EFP renewal application, and all groundfish catch will accrue against the appropriate Amendment 80, CDQ, or trawl limited access sector catch and PSC allowances.

Under the EFP, participants would be limited to their groundfish allocations under the 2017 harvest specifications (81 FR 14773, March 18, 2016). The amount of halibut mortality applied to the EFP activities would be subject to review and approval by NMFS.

In 2018, the AKSC would be required to submit to NMFS a report of the EFP results after EFP experimental fishing has ended in 2017. The report would include a comparison of halibut mortality from halibut sampled during the EFP and an estimate of halibut mortality under standard IPHC halibut mortality rates for those target fisheries. Additionally, the report should compare the estimated amount of halibut sampled by observers in the factory with the census of halibut collected in the factory by vessel crew to evaluate the precision and associated variance of sampled-based extrapolations and to

inform a decision of the best way to account for factory halibut in a regulated program.

This EFP would be valid upon renewal until either the end of 2017 or when the annual halibut mortality apportionment is reached in areas of the BSAI open to directed fishing by the various sectors, whichever occurs first. EFP-authorized fishing activities would not be expected to change the nature or duration of the groundfish fishery, gear used, or the amount or species of fish caught by the participants.

The fieldwork that would be conducted under this EFP is not expected to have a significant impact on the human environment as detailed in the categorical exclusion prepared for this action (see **ADDRESSES**).

In accordance with § 679.6, NMFS has determined that the renewal application warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council is scheduled to consider the EFP renewal application during its February 2017 meeting, which will be held at the Renaissance Seattle Hotel, Seattle WA. The applicant has been invited to appear in support of the renewal application.

#### Public Comments

Interested persons may comment on the application at the February 2017 Council meeting during public testimony or until February 7, 2017. Information regarding the meeting is available at the Council's Web site at <http://www.npfmc.org>. Copies of the renewal application and categorical exclusion are available for review from NMFS (see **ADDRESSES**). Comments also may be submitted directly to NMFS (see **ADDRESSES**) by the end of the comment period (see **DATES**).

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

Dated: January 12, 2017.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Compliance Bulletin 2016-03: Detecting and Preventing Consumer Harm From Production Incentives

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Compliance Bulletin.

**SUMMARY:** The Bureau recognizes that many supervised entities may choose to implement incentive programs to achieve business objectives. When properly implemented and monitored, reasonable incentives can benefit consumers and the financial marketplace as a whole.

This bulletin compiles guidance that has previously been given by the CFPB in other contexts and highlights examples from the CFPB's supervisory and enforcement experience in which incentives contributed to substantial consumer harm. It also describes compliance management steps supervised entities should take to mitigate risks posed by incentives.

**DATES:** The Bureau released this Compliance Bulletin on its Web site on November 28, 2016

**FOR FURTHER INFORMATION CONTACT:** Vanessa Careiro, Attorney-Advisor, Office of Supervision Policy, 1700 G Street NW., 20552, (202) 435-9394.

#### SUPPLEMENTARY INFORMATION:

##### 1. Compliance Bulletin

Financial services companies, including entities supervised by the Consumer Financial Protection Bureau (CFPB or Bureau), may accomplish business objectives through programs that tie outcomes to certain benchmarks, both required and optional. Companies may apply these production incentives, including sales and other incentives, ("incentives") to employees or service providers or both. The risks these incentives may pose to consumers are significant and both the intended and unintended effects of incentives can be complex, which makes this subject worthy of more careful attention by institutional leadership, compliance officers, and regulators alike. We thus will continue to invite further dialogue and discussion around the issues addressed in this Bulletin.

The Bureau acknowledges that incentives have been common across many economic sectors, including the market for consumer financial products and services. When properly implemented and monitored, reasonable incentives can benefit all stakeholders and the financial marketplace as a whole. For instance, companies may be able to attract and retain high-performing employees to enhance their overall competitive performance. Consumers may also benefit if these programs lead to improved customer service or introduce them to products or services that are beneficial to their financial interests.

Such incentives can affect a wide range of outcomes for employees or

service providers, from their compensation levels to whether they will continue to be employed or retained at all. Incentives are found in many markets for consumer financial products and services, and span the life cycle from marketing to sales, servicing, and collection. Common examples include sales or referrals of new products or services to existing consumers ("cross-selling"), sales of products or services to new customers, sales at higher prices where pricing discretion exists, quotas for customer calls completed, and collections benchmarks.

This Bulletin compiles guidance the CFPB has already given in other contexts and highlights examples from the CFPB's supervisory and enforcement experience in which incentives contributed to substantial consumer harm. It also describes compliance management steps that supervised entities should take to mitigate risks posed by incentives.

##### A. Risks to Consumers From Incentives

Despite their potential benefits, incentive programs can pose risks to consumers, especially when they create an unrealistic culture of high-pressure targets. When such programs are not carefully and properly implemented and monitored, they may create incentives for employees or service providers to pursue overly aggressive marketing, sales, servicing, or collections tactics. Through its supervisory and enforcement programs, the CFPB has taken action where employees have opened accounts or enrolled consumers in services without consent or where employees or service providers have misled consumers into purchasing products the consumers did not want, were unaware would harm them financially, or came with an unexpected ongoing periodic fee.

Depending on the facts and circumstances, such incentives may lead to outright violations of Federal consumer financial law<sup>1</sup> and other risks to the institution, such as public enforcement, supervisory actions, private litigation, reputational harm,

<sup>1</sup> Selected examples of these violations previously identified by the Bureau include the Dodd-Frank Act's prohibition of unfair, deceptive, and/or abusive acts or practices (UDAAPs) (Dodd-Frank Act, §§ 1031 & 1036(a), codified at 12 U.S.C. 5531 & 5536(a); the Electronic Fund Transfer Act (EFTA), as implemented by Regulation E (15 U.S.C. 1693 *et seq.*; 12 CFR part 1005); the Fair Credit Reporting Act, as implemented by Regulation V (15 U.S.C. 1681-1681x; 12 CFR part 1022); the Truth in Lending Act (TILA), as implemented by Regulation Z (15 U.S.C. 1601 *et seq.*; 12 CFR part 1026); and the Fair Debt Collection Practices Act (15 U.S.C. 1692-1692p).