

Feb. 09

Public Testimony Sign-Up Sheet

Agenda Item D-2(b) Halibut Survival EFP

	NAME (PLEASE PRINT)	AFFILIATION
1	GREGG WILLIAMS	IPHC
2	LORI SWANSON	GFF
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver *Chris*
Executive Director

DATE: January 29, 2009

SUBJECT: Halibut PSC Discard Survival EFP

ESTIMATED TIME: 4 HOURS (All D-2 issues)
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ACTION REQUIRED

- (b) Review of Halibut PSC Discard Survival EFP

BACKGROUND

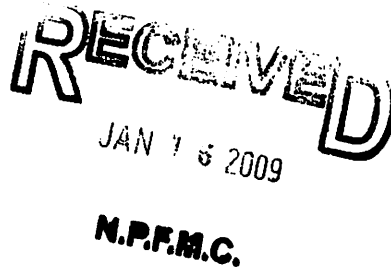
An exempted fishing permit (EFP) application has been submitted to allow incidentally-caught Pacific halibut to be held on a trawl vessel after capture, in order to research survivability. The project proposes to collect data necessary to construct a reflex action mortality predictor (RAMP) for predicting delayed mortality in individual trawl caught halibut, and to assess the tradeoffs of adding the RAMP method to the current IPHC viability method for predicting delayed mortality in individual fish. The collected data may provide for more accurate projections of halibut mortality in trawl fisheries. A letter to the Council chairman from Mr Doug Mecum (NMFS AKR) regarding receipt of this application, AFSC's approval of the experimental design, and the EFP application itself, are attached as Item D-2(b)(1). Item D-2(b)(2) is a letter from the International Pacific Halibut Commission which raises some concerns about the ability of the experiment, as designed, to achieve the stated objectives.

The experiment would begin on March 1, 2009, and continue until 100 halibut have been sampled, tagged, observed in live holding tanks, evaluated for potential survival, and all recording of the data for the study is carried out. The applicant, Mr Todd Loomis, of the North Pacific Fisheries Foundation, will be available to present a description of the experiment.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

January 16, 2009



Eric Olson, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501

Re: Issuance of an Exempted Fishing Permit to improve predictions of delayed mortality of halibut.

Dear Chairman Olson:

NMFS received an application from Mr. Todd Loomis of the North Pacific Fisheries Foundation (NPF) for an exempted fishing permit (EFP), on December 12, 2008. We are providing the application to the U.S. Coast Guard and the North Pacific Fishery Management Council (Council), as required by 50 CFR 600.745(b)(3)(i) and 50 CFR 679.6(c)(2). The data from the study associated with this permit could provide for more accurate projections of halibut mortality in trawl fisheries. NMFS has found the application complete and is initiating consultation with the Council. The application for the EFP will be presented at the February 2009 Council meeting for public review and Council consideration. Issuance of EFPs is authorized by the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Islands of Alaska and its implementing regulations at 50 CFR 679.6, Exempted Fisheries.

The applicants developed the EFP in cooperation with NMFS staff. The Alaska Fisheries Science Center (AFSC) approved the EFP scientific design on January 8, 2009. The project is intended to provide information needed by the Council and NMFS to inform decisions on future management actions in the Bering Sea/Aleutian Islands (BSAI) non-pelagic trawl fisheries. The EFP would allow data to be collected from approximately 100 halibut caught in the non-pelagic trawl fishery for flatfish. The halibut would support research necessary to construct a reflex action mortality predictor (RAMP) for predicting delayed mortality in individual trawl caught halibut, and to assess the tradeoffs of adding the RAMP method to the current IPHC viability method for predicting delayed mortality in individual fish, versus continuing to apply the existing IPHC viability method. The project would begin March 1, 2009, and continue until 100 halibut had been sampled, tagged, observed in live holding tanks, evaluated for potential survival, and all recording of the data for the study is carried out.

This proposed action would exempt the vessel, F/T Seafisher, (Federal Fishing Permit number 3835) from requirements to release all incidental catch of halibut at § 679.7(a)(12) and § 679.21(b)(2)(ii). Halibut used would be taken under normal commercial fishing operations. All halibut would be returned to the sea within 3 days of harvest. The EFP would apply for the



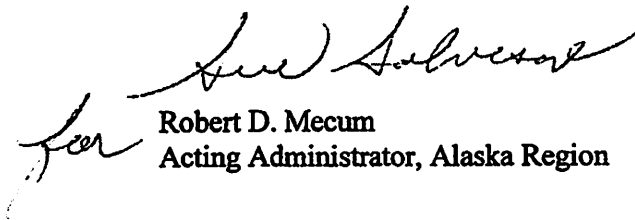
period of time required to complete the experiment in 2009 in areas open to directed fishing for flatfish. The vessel would also be required to retain onboard the vessel, a copy of the International Pacific Halibut Commission letter to the North Pacific Fisheries Foundation, granting exemption to Annual Management Measures for Pacific Halibut prohibiting retention of halibut with trawl gear.

Under regulations at § 679.6, we have consulted with the AFSC, and have determined that the application contains all the information necessary to judge whether the proposal constitutes a valid fishing experiment appropriate for further consideration. We are initiating consultation with the Council by forwarding the application, as required by 50 CFR 679.6 (a)(2). We understand that you have scheduled Council review of the proposed project at the Council's February 2009 meeting in anticipation of our review and determination that the application warrants further consideration and consultation with the Council.

After reviewing the proposed EFP in relation to NOAA Administrative Order (NAO) 216-6, including the criteria used to determine significance, NMFS has determined that the proposed EFP research would not have a significant effect on the human environment. Specifically, the proposed action qualifies for a Categorical Exclusion under section 6.03c.3(a) because it is a research program of limited size and magnitude with no effect on the environment and for which any cumulative effects are negligible.

Please notify Mr. Todd Loomis of the North Pacific Fisheries Foundation of your receipt of the application and invite him to appear before the Council in February in support of the application. We will publish a notice of receipt of the application in the Federal Register with a brief description of the proposal. Enclosed are copies of the application, the AFSC's memorandum of approval of the experimental design, the IPHC letter allowing for the interim retention of halibut, and the Categorical Exclusion supporting this proposal.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

Enclosures (4)



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Alaska Fisheries Science Center
7600 Sand Point Way N.E.
Bldg. 4, F/AKC
Seattle, Washington 98115-0070

January 8, 2009

MEMORANDUM FOR: Robert D. Mecum
Acting Regional Administrator, Alaska Region

FROM: Douglas P. DeMaster *Douglas DeMaster*
Science and Research Director, Alaska Region

SUBJECT: Application for Exempted Fishing Permit (EFP) from North
Pacific Fisheries Foundation

AFSC staff has reviewed the attached Exempted Fishing Permit (EFP) application from the North Pacific Fisheries Foundation (NPFf). The NPFf proposes an experiment to investigate halibut bycatch discard survival for a Bering Sea non-pelagic trawl fishery. We recommend approval of this application. This recommendation is made with the following conditions:

- 1) AFSC is not the sponsor of this research (p6 of research plan).
- 2) All reference to the NMFS chief scientist and NMFS being in charge of the project must be revised. This is a NPFf project and NPFf must provide the chief scientist, take the lead and, if necessary, provide the technician(s). NMFS is capable of providing a collaborating, or participating, scientist. All reference to NMFS participation must be as "participating scientist".
- 3) NPFf chief scientist or project leader shall notify required NMFS and local authorities of the beginning and actual end of the EFP fishing operations (p6 of research plan).
- 4) In reporting of the results, a report of initial findings must be prepared and submitted, even if there is a planned, peer-reviewed paper. There is no guarantee that a proposed paper will be timely, or accepted for publication.
- 5) The permit application must make clear that these activities need to be done under normal fishing, sorting and processing conditions, and that is why it will be conducted during the commercial fishery, hence the need for an exemption from halibut retention regulations.

If the project becomes a multi-year effort, we would expect to be given the opportunity to review a report of the 2009 findings along with a revised survey plan for the future years.

cc: F/AKR - J. Hartman



**Application for Exempted Fishing Permit
(Revised January 14, 2009)**

**Halibut Bycatch Discard Survival Experiment
for a Bering Sea, Non-pelagic Trawl Fishery**

Submitted by: North Pacific Fisheries Foundation

- (1) **Date:** January 14, 2009
- (2) **Applicant:**
North Pacific Fisheries Foundation
3600 15th Avenue W, Suite 201
Seattle, WA 98119
- (3) **Purpose and Goal of the Experiment:**
Halibut is relatively resistant to trawl capture and has a good chance of survival if care is taken to discard it rapidly after capture (Davis 2002). Recent research conducted by Dr. Davis has shown that his RAMP method (reflex action mortality predictor; Davis and Ottmar 2006; Davis 2007), based on the relationship between fish reflex impairment and mortality, is a useful method to predict fish survival and to identify live release candidates. Laboratory research indicated that halibut is an excellent species for RAMP, as it shows a wide range of reflex impairment in response to capture stressors and mortality. A next step to applying RAMP to estimate survival of halibut bycatch in a Bering Sea non-pelagic, trawl flatfish fishery is to conduct an at-sea experiment aboard a vessel in an actual fishery to build a RAMP curve applicable to the fishing conditions and to compare with laboratory RAMP curves. If this initial experiment is successful, we will have a tool to predict survival of halibut bycatch over a wide range of fishing and catch processing conditions for flatfish fisheries.

These experiments could lead to the development of modifications to the fishing operations and sorting and accounting of the catch consistent with Observer Program protocols which would increase survival of halibut bycatch. The application of a halibut RAMP would also provide an efficient method for identifying live release candidates (fish that would survive) and potentially an improved method of estimating halibut bycatch survival compared to the current IPHC mortality assessment criteria. A successful halibut live release program would be consistent with Observer Program data collection protocols, reduce the impact on the halibut resource, and potentially increase the opportunity to harvest a greater portion of the TAC of the directed target species.


The development of a halibut RAMP curve relevant to actual commercial fishing operations requires that an experiment be conducted aboard a commercial fishing vessel that has a bycatch of halibut. Individual halibut must be sampled and assessed by RAMP criteria and held for a minimum of three days in flow through seawater tanks to determine survival rates. Under current regulations, incidental halibut caught by trawl must be released as soon as possible, thus an Exempted Fishing Permit is required to conduct this experiment and to hold halibut aboard the vessel for a minimum of three days.

The live release research project will collect the necessary data for calculating and calibrating a RAMP curve for halibut discard mortality in commercial trawl operations. Specific objectives include:

1. Determine paired RAMP & IPHC viability assessment scores in individual halibut collected from hauls on board ship after capture by trawl.
2. Calculate and calibrate a RAMP curve for halibut.
3. Collect trawling, deck, and live tank environmental conditions data for determining fishing factors associated with halibut immediate, delayed, and total mortality.

(4) Technical Details:

- (i) **Amount of species to be harvested:** There is no additional quota being requested, however, an EFP is necessary to authorize the tagging and retention of halibut for a minimum of a three-day holding period. The *F/T Seafisher* is part of an Amendment 80 cooperative and all catch made while fishing under the EFP will accrue against the vessel's cooperative quota. Since the vessel will be targeting flatfish, it is unlikely that any Atka mackerel will be taken as part of this EFP. Pollock and Pacific cod catch rates should fall well below the maximum retainable amount allowed by regulation during the regular fishing season.
- (ii) **Area and timing of the experiment:** This research will be conducted during one or two trips (~14 days each, but may be longer) in a Bering Sea flatfish directed fishery in 2009 in areas open to directed fishing for flatfish. Fishing will not occur in areas that are closed due to Steller sea lion protection measures or other areas closed to non-pelagic trawling.
- (iii) **Vessel and gear to be used:** *F/T Seafisher*, Bering Sea flatfish, non-pelagic trawl
- (iv) **Experimental design:** See the attached Scientific Research Plan
- (v) **Provision for public release of data and information:** The performance of this project will be measured by completion of the collection and analysis of data, construction of a RAMP curve for halibut, preparation and submission of an initial cruise report, and writing of a manuscript for submission to a peer-reviewed scientific journal on the use of RAMP to predict halibut discard mortality and identify candidates for live release under commercial fishing conditions. A cruise report will be written after the research is conducted that will document accomplishments, but will not include data to be analyzed after the cruise. The cruise report will document research objectives, area sampled, vessel used, scientists aboard, itinerary and schedule, number of samples, number of fish held, and a summary of any problems and successes. Data will be analyzed and written up for submission to a journal by the end of 2010. All data will be turned over to NMFS scientists at AFSC in the Fisheries Behavioral Ecology Program. Copies of the data will be available upon request.

- (5) **Observers:** The required federal observers under Amendment 80 will be onboard and this study will have no net effect on the observer's ability to perform their normal duties. NPPF will have a chief scientist on board and will also supply a technician to assist the chief scientist. If available, NMFS may deploy a scientist to participate in the study. All parties will be available to participate in a pre-cruise meeting with the vessel master, select crew, observers, and the Observer Program or other NMFS personnel if available. In addition, prior science planning meetings will occur between NPPF Directors, NMFS scientists including the Fisheries Monitoring and Analysis Division (Observer Program) staff, and IPHC scientists.
- (6) **Principal Parties:** NPPF Board of Directors and the NMFS Alaska Fisheries Science Center Scientists from the Fisheries Behavioral Ecology Program. Scientists from the International Pacific Halibut Commission and NMFS Observer Program staff were included in discussions for development of the Scientific Research Plan.
- (7) **Vessel information**
- (i) **Name:** *F/T Seafisher*
 - (ii) **Contact information for owner and master:**
Owner: M/V SAVAGE, Inc.
Master: Howard Warner
Address: 3600 15th Avenue W, Suite 201
Seattle, WA 98119
Telephone: 206-282-3277
 - (iii) **USCG Documentation No. 575587; ADF&G No. 56964;
LLP Groundfish License No. LLG2014**
 - (iv) **Homeport:** Seattle, WA
 - (v) **Length of vessel:** 211'
 - (vi) **Net tonnage:** 586
 - (vii) **Gross Tonnage:** 1,453
- (8) **Signature of Applicant:** 
Nancy Kercheval, Director, NPPF

References

- Davis, M.W., 2002. Key principles for understanding fish bycatch discard mortality. *Can. J. Fish. Aquat. Sci.* 59, 1834-1843.
- Davis, M. W., and Ottmar, M. L. 2006. Wounding and reflex impairment may be predictors for mortality in discarded or escaped fish. *Fisheries Research*, 82: 1-6.
- Davis, M. W. 2007. Simulated fishing experiments for predicting delayed mortality rates using reflex impairment in restrained fish. - *ICES Journal of Marine Science*, 64: 1535-1542.

SCIENTIFIC RESEARCH PLAN

HALIBUT BYCATCH DISCARD SURVIVAL EXPERIMENT FOR A BERING SEA, NON-PELAGIC TRAWL FISHERY

Revised January 14, 2009

Synopsis

The North Pacific Fisheries Foundation, a non-profit organization, developed this research plan in cooperation with the Fisheries Behavioral Ecology Program of the Alaska Fisheries Science Center (AFSC) at Newport, Oregon, the International Pacific Halibut Commission (IPHC), and the Fisheries Monitoring & Analysis Division (Observer Program) of the AFSC at Seattle, WA. The Fisheries Behavioral Ecology Program conducts laboratory and field research on the impact of environmental and capture processes on post-capture behavior and mortality of important bycatch groundfish species, including sub-adult and adult walleye pollock, Pacific cod, northern rock sole, and Pacific halibut. As part of their research efforts, a project was funded by the NMFS National Reducing Bycatch Project FY2007; FRM Magnuson-Stevens Act Reauthorization Projects. This project is entitled "Developing a Live Release Program for Increasing Survival of Pacific Halibut Discards". The experiment presented here is a subcomponent of that project.

Halibut is a valuable species that can only be harvested by the directed North Pacific longline fishery. Other fisheries have an incidental bycatch of halibut that must be returned to the ocean as soon as possible. The North Pacific Fishery Management Council establishes a seasonal maximum biomass of halibut bycatch adjusted for the estimated halibut discard mortality factor for each non-halibut directed fishery. Fisheries close when they reach their seasonal mortality cap even if the catch of the target species is less than the seasonal quota for the directed fishery. In the case of Bering Sea flatfish fisheries, seasons have been cut short by the halibut bycatch cap before the quotas have been reached.

With the implementation of Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands, allocation of halibut was modified for certain vessels, but halibut will likely continue to be a limiting species in some fisheries. The Amendment 80 sector received an initial allocation of 2,525 mt of halibut, but that will decrease by 50 mt per year until it reaches 2,325 mt in 2012 and subsequent years. In certain years, this amount is less than the sector's historic use, therefore, finding ways to conserve halibut and studying ways to increase halibut survival is important for this sector.

Purpose of Work

Halibut is relatively resistant to trawl capture and has a good chance of survival if care is taken to discard it rapidly after capture (Davis 2002). Recent research conducted by Dr. Davis has shown that his RAMP method (reflex action mortality predictor; Davis and Ottmar 2006; Davis 2007), which is based on the relationship between fish reflex impairment and mortality, is a useful method to predict fish survival and to identify live release candidates. Laboratory research has

shown that halibut is an excellent species for RAMP as it shows a wide range of reflex impairment in response to capture stressors and mortality. The next step is to collect data in a flatfish fishery and build a RAMP curve applicable to trawlers in an actual fishery. This information can then be compared to the laboratory generated RAMP curve. If this initial experiment is successful, we will have a tool to predict survival of halibut bycatch over a wide range of fishing and catch processing conditions for flatfish fisheries.

The proposed research does not attempt to characterize bycatch halibut or their immediate and delayed mortality in a specific fishery by randomly sampling within and among trawl hauls in order to create an unbiased, representative sample of bycatch halibut. Instead, the purpose of the proposed research is to build a RAMP curve for predicting delayed mortality in individual trawl caught halibut and to compare the RAMP method with the IPHC viability method for predicting delayed mortality in individual fish. The research is accomplished by paired sampling of RAMP and IPHC viability scores for individual fish, determining their delayed (3 day) mortality, calculating the relationship between reflex impairment and delayed mortality, confirming the relationship between IPHC viability scores and delayed mortality, and comparing the precision and accuracy of predictions for individual delayed mortality between RAMP and IPHC viability methods.

These experiments could lead to the development of recommendations for modifying fishing operations, catch handling, and sorting practices that would increase survival of halibut bycatch. These recommendations would be developed in collaboration with the Observer Program so they are consistent with observer sampling protocols. The application of a halibut RAMP would also provide an efficient method for identifying live release candidates (fish that would survive) and potentially an improved method of estimating halibut bycatch survival compared to the current IPHC mortality assessment criteria. A successful halibut live release program that is consistent with Observer Program sampling protocols would reduce the impact on the halibut resource and potentially increase the opportunity to harvest a greater portion of the TAC of the directed target species.

The development of a halibut RAMP curve relevant to actual commercial fishing operations requires that an experiment be conducted aboard a commercial fishing vessel that has a bycatch of halibut. Individual halibut must be sampled and assessed for RAMP criteria and held for a minimum of three days in flowing seawater tanks to determine delayed mortality and survival rates. Under current regulations, incidental halibut caught by the trawl must be released as soon as possible, thus an Exempted Fishing Permit is required to conduct this experiment and allow for the tagging and holding of halibut aboard a commercial vessel for a minimum of three days.

Objectives

The live release research project will collect the necessary data for calculating and calibrating a RAMP curve for halibut discard mortality in commercial trawl operations. Specific objectives include:

1. Determine paired RAMP & IPHC viability assessment scores in individual halibut collected from hauls on board ship after capture by trawl.

2. Calculate and calibrate a RAMP curve for halibut.
3. Collect trawling, deck, and live tank environmental conditions data for determining fishing factors associated with halibut immediate, delayed, and total mortality.

Overview of Operations and Preparations

This study will be conducted during the 2009 flatfish fisheries in the Bering Sea and the vessel will carry two observers as required under Amendment 80. NPFF will have a chief scientist and also will supply a technician to assist them while conducting the RAMP research. Prior to the cruise the chief scientist and technician will participate in a pre-cruise meeting with vessel personnel, the observers, and, if available, Observer Program staff to review the project. The observers' responsibilities will not be impacted by this study and there will be no net effect on their ability to perform their duties.

Halibut will be captured by trawl, placed into a live tank (fish bin), and collected from the sorting belt or live tank. The chief scientist will collect halibut (30 – 65 cm) after catch has passed by the observer sampling station on the sorting belt. Halibut of this size fall within the average size taken during flatfish fisheries and are suitable for holding in tanks for several days. If, however, the chief scientist is unable to get enough halibut in this manner they will collect halibut directly from the live tank.

Halibut will be sampled for length, reflex actions and IPHC viability score through a representative range of actual commercial trawling operations and sorting times aboard the catcher-processor *F/T Seafisher*. Sampled halibut will be tagged with Floy tags and held in flowing seawater tanks for a minimum of three days on board ship to measure delayed mortality. Halibut will be discarded after the holding period. The operator of the *F/T Seafisher* will provide all fishing gear for the project. Vessel personnel will install the flowing seawater tanks that will be used during the experiment.

There is no additional quota being requested, however, an EFP is necessary to authorize the tagging and retention of halibut for the holding period prior to release. The *F/T Seafisher* is part of an Amendment 80 cooperative and all catch made while fishing under the EFP will accrue against the vessel's cooperative quota. The catch of all species, including halibut, will be accounted for using standard observer sampling methods and data reporting.

Stellar Sea Lion Critical Habitat

With respect to trawl location, depth, frequency, and gear used; the operation of the vessel is not anticipated to vary from how it typically operates in a flatfish fishery. Fishing will occur in areas open to directed fishing for flatfish and it is unlikely that any Atka mackerel will be taken as part of this research. Pollock and Pacific cod catch rates should fall below the maximum retainable amount allowed by regulation during the regular fishing season. Fishing will not occur in areas

that are closed due to Steller sea lion protection measures and we do not anticipate any marine mammal interactions during this research.

Projected Take and Observer Coordination

This study will be conducted during one or two trips (~14 days each, but may be longer) in a Bering Sea flatfish trawl fishery in 2009. Between 75 and 100 halibut (30 – 65 cm FL) will be sampled from commercial hauls and halibut will be collected in a manner that does not interfere with the observer sampling of catch. The chief scientist will work closely with the observer to ensure their data collection and data integrity are not impacted or compromised by the EFP data collection. Ideally, halibut will be sampled after they have passed by the observer sampling station. However, if the chief scientist determines that more halibut or halibut of a specific condition are required to meet the sampling goals, they may resort to collecting halibut directly from the live tank. Halibut collected directly from the live tank will be recorded separately in the observer data using existing protocols for documenting fish that are sorted out of the catch prior to observer sampling. Normal fishing, catch handling, and processing activities will be followed and no illegal pre-sorting will occur under this EFP.

RAMP Research

Halibut will be captured by trawl, placed into a live tank (fish bin), and systematically collected throughout the processing time. Collections will be made to reflect a range of sorting times and conditions associated with increasing halibut mortality (i.e., 0-100% mortality). Upon collection from the sorting belt or live tank, individual halibut will be sampled for fork length, reflex actions (RAMP), and IPHC viability score. For RAMP, halibut will be restrained and then observed for reflex actions, injury, and bleeding. Halibut will be restrained in a plastic holding device that is cushioned with open celled foam and sampled for five reflex actions including: (1) body flex after restraint; (2) operculum closure after holding open with a nylon probe; (3) mouth closure after holding open with a nylon probe; (4) gag response after stimulation of throat with a nylon probe; and (5) vestibular-ocular response. In laboratory experiments, collection of RAMP reflex impairment data took approximately one minute per fish.

IPHC viability will be assessed using the dichotomous key provided to observers for assessing trawl-caught halibut [Note that the IPHC viability assessment shares measures with RAMP for: (1) fish alive or dead; (2) operculum closure; (3) muscle tone (body flex); and (4) mouth closure]. Additional data will be taken for IPHC viability assessment, including: (5) injury extent (none, minor, major); (6) bleeding (none or slight, profuse, from the gills). We estimate it will take approximately 30 seconds to measure the additional elements of the IPHC viability assessment.

Each halibut will be Floy tagged in the pectoral fin area and held in groups in flowing seawater tanks for a minimum of three days to note delayed mortality. Floy tags will be individually numbered to allow tracking of individual halibut. After conclusion of the holding period, each halibut will be sampled again for reflex actions, IPHC viability score, and then released into the ocean. Floy tags will be removed prior to release. All other fish captured in the sampled hauls will be processed as normally occurs during commercial operations.

Data will be collected from sampled hauls and will include information on tows conditions (duration, depth, temperature, light), total catch per tow, environmental conditions on deck and in the live tank (temperature, light, sea state), and sorting times (time that halibut were out of the water). The halibut reflex actions for individual fish will be scored as present (1) or absent (0). RAMP scores for individual fish will be calculated as: $RAMP = 1 - (\text{total reflex action score} / \text{total score possible})$ by summing the reflex action scores for each fish, dividing by the total number of actions possible, and subtracting this proportion of reflex actions present from 1 to give the proportion of reflex impairment as a RAMP score. This will give a RAMP score ranging from 0.0 to 1.0.

The RAMP and IPHC viability techniques are used to estimate fish condition and then to predict delayed mortality. A sample size of up to 100 fish will be used to make paired measurements of RAMP and IPHC viability scores for individual fish over a range of conditions between excellent and moribund, after which fish will be held for three days to assess delayed mortality. This will allow the relationships between RAMP scores and mortality and IPHC scores and mortality to be calculated and compared. Laboratory and field studies have shown that delayed mortality in halibut towed in a net and exposed to air occurred prior to 3 days after capture (Davis and Schreck 2005; Davis and Ottmar 2006; Davis 2007; and Pikitch et al. 1996). A sensitivity analysis will be conducted to determine the effect of sample size on accuracy and precision of mortality estimates. Then RAMP and IPHC viability mortality predictions will be compared at various sample sizes using testing of estimate accuracy and precision.

A halibut RAMP curve will be calculated by fitting a non-linear sigmoid curve to RAMP data on the x axis and mortality (delayed or total) data on the y axis. A RAMP curve in this study should include fish (30-65 cm) with reflex impairment scores ranging from 0 - 1.0, representing conditions from excellent to moribund. Larger size halibut (>65 cm) are not included in the design because there is not enough room on board ship to hold them. Excluding fish >65 cm will not bias the study other than to limit the results to fish <65 cm. Future research could confirm that halibut >65 cm show the same relationship between reflex impairment and delayed mortality that smaller fish have.

Once constructed, the halibut RAMP curve could be used to estimate trawl discard mortality, to evaluate the effects of fishing practices on discard mortality, and in an expanded future project for developing sorting and discarding protocols compatible with observer sampling protocols to increase survival of discarded halibut from trawling operations. This project relies on extensive collaboration between AFSC personnel and NPF (North Pacific Fishing Foundation, a non-profit industry research foundation) personnel and commercial vessel facilities and time.

Scientific Personnel

Personnel are yet to be determined. The chief scientist and technician will be selected by NPF and NMFS may provide a participating scientist if funding is available.

Data Reporting

The performance of this project will be measured by completion of the collection and analysis of data, construction of a RAMP curve for halibut, and writing of a manuscript for submission to a

peer-reviewed scientific journal on the use of RAMP to predict halibut discard mortality and identify candidates for live release under commercial fishing conditions. A cruise report will be written after the research is conducted that will document accomplishments, but will not include data to be analyzed after the cruise. The cruise report will document research objectives, area sampled, vessel used, scientists aboard, itinerary and schedule, number of samples, number of fish held, and a summary of any problems and successes. The cruise will be conducted during the 2009 Bering Sea flatfish fisheries and data will be analyzed and written up for submission to a journal by the end of 2010.

NPFF will notify local authorities of fishing activities as appropriate. Copies of this Scientific Research Plan and approving letter from NMFS and the IPHC will be carried aboard the vessel while conducting this work. The results of the research will be published in peer-reviewed journals and disseminated to fishery councils and management agencies. The sponsoring organization is the North Pacific Fisheries Foundation and this research plan was developed in cooperation with AFSC and IPHC personnel. The NPFF can be contacted at 3600 15th Ave. W, Suite 201, Seattle, WA 98119 or 206-282-3277.

References

- Davis, M.W., 2002. Key principles for understanding fish bycatch discard mortality. *Can. J. Fish. Aquat. Sci.* 59, 1834–1843.
- Davis, M. W. 2007. Simulated fishing experiments for predicting delayed mortality rates using reflex impairment in restrained fish. – *ICES Journal of Marine Science*, 64: 1535–1542.
- Davis, M. W., and Ottmar, M. L. 2006. Wounding and reflex impairment may be predictors for mortality in discarded or escaped fish. *Fisheries Research*, 82: 1–6.
- Davis, M. W., and Schreck, C. B. 2005. Responses by Pacific halibut to air exposure: lack of correspondence among plasma constituents and mortality. *Transactions of the American Fisheries Society*, 134: 991–998.
- Pikitch, E.K, Erickson, D., Oddson, G., Wallace, J. & Babcock, E. 1996. Mortality of trawl caught and discarded Pacific halibut (*Hippoglossus stenolepis*). *ICES CM 1996/B:16*.

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INTERNATIONAL PACIFIC HALIBUT COMMISSION

ESTABLISHED BY A CONVENTION BETWEEN CANADA
AND THE UNITED STATES OF AMERICA

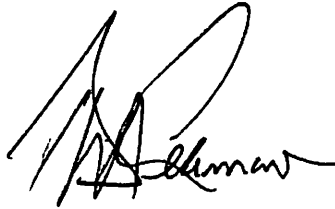
INSPECTOR
BRUCE M. LEAMAN
P.O. BOX 35000
SEATTLE, WA 98122-0000
TELEPHONE
(206) 464-1500
FAX
(206) 464-1500

January 9, 2009

To Whom It May Concern:

This permit is issued in regards to National Marine Fisheries Service Exempted Fishing Permit #09-01, and the North Pacific Fisheries Foundation as applicant. Permission is extended to those authorized for exempted fishing activities to capture up to 150 Pacific halibut (*Hippoglossus stenolepis*) for scientific purposes as part of a study entitled "Halibut Bycatch Discard Survival Experiment". The capture will take place during March 1 – November 15, 2009. Fish will be collected by trawl gear from waters in the Bering Sea.

The halibut caught for this study are only to be retained on board the vessel for the duration of the study as needed to fulfill the study objectives, and must be discarded at sea following use. Halibut obtained under this permit may not be retained for purposes other than scientific research and may not be sold. Halibut captured but not used in the study specified in this permit must be returned to the sea with a minimum of delay and injury.



Bruce M. Leaman
Executive Director




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

January 13, 2009

MEMORANDUM FOR: The File

FROM: Robert D. Mecum 
Acting Administrator, Alaska Region

SUBJECT: Categorical Exclusion for an Exempted Fishing Permit to test
Halibut Mortality Measurement Methods

NMFS has received an application for an exempted fishing permit (EFP) from North Pacific Fisheries Foundation (NPF). The EFP would allow data to be collected from approximately 100 halibut caught by non-pelagic trawl gear for constructing a reflex action mortality predictor (RAMP) for predicting delayed mortality in individual trawl caught halibut, and to compare the RAMP method with the IPHC viability method for predicting delayed mortality in individual fish. The activities under this EFP would be conducted within the 2009 harvest specifications of Groundfish and halibut prohibited species catch.

This proposed action would exempt the vessel, F/T Seafisher, vessel identification No. 56964 from requirements to immediately release all incidental catch of halibut, at § 679.7(a)(12) and § 679.21(b)(2)(ii). Halibut used would be taken under normal commercial fishing operations. All halibut would be returned to the sea within 3 days of harvest. The EFP would apply for the period of time required to complete the experiment in 2009 in areas open to directed fishing for flatfish. This EFP would be of limited scope and duration and would not be expected to change the nature or duration of the groundfish fishery, fishing practices or gear used by this vessel, or the amount or species of fish caught.

The incidental catch of halibut during flatfish fishing is within the scope analyzed in the Environmental Impact Statement, January 2007, (Alaska Groundfish Harvest Specifications). Based on the EIS, NMFS found no significant impacts on the human environment from this action.

After reviewing the proposed action in relation to NOAA Administrative Order (NAO) 216-6, including the criteria used to determine significance, we have determined that the proposed action, if implemented, would not individually or cumulatively have a significant effect on the human environment. Specifically, this proposed action is categorically excluded under Section 5.05b of NAO 216-6 from both further environmental review and the requirement to prepare an environmental review document because it is within the scope of previous analyses that "for the



“same [*sic*] action demonstrated that the action will not have significant impacts on the quality of the human environment.” This action does not trigger any of the exceptions to a CE listed under Section 5.05c of NAO 216-6 because it does not involve a geographic area with unique characteristics, is not the subject of public controversy based on potential environmental consequences, does not have uncertain environmental impacts or unique or unknown risks, does not establish a precedent or decision in principle about future proposals, will not result in cumulatively significant impacts, and will not have any adverse effects upon endangered or threatened species or their habitats.

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INTERNATIONAL PACIFIC HALIBUT COMMISSION

ESTABLISHED BY A CONVENTION BETWEEN CANADA

AND THE UNITED STATES OF AMERICA

DIRECTOR
BRUCE M. LEAMAN

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(206) 632-2982

January 23, 2009

RECEIVED
JAN 23 2009
N.P.F.M.C.

Mr. Eric Olsen, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Re: February 2009 Agenda Item D-2(b) Review of Halibut PSC Discard Survival EFP

Dear Eric:

IPHC staff have worked with the proponents of the EFP application in attempting to structure the experiment to provide at least a partial comparison with current methods of assessing survival or DMR's for halibut in various fisheries. While the IPHC staff is not opposed to this experimental permit, we do not believe that the experiment can achieve the stated objectives and it will result in an underestimate of bycatch mortality of trawl-caught halibut. We submit the following concerns related to interpretation and application of the RAMP criteria.

1. The objective of the project – to evaluate methods for projecting survival of released halibut – is reasonable. However, we question whether the experiment will provide a valid comparison between survival projected with RAMP method and the method currently used. Current methods for projecting survival are based on a combination of condition factors (similar to the RAMP method) and tag-recapture programs in the natural environment over extended time periods (months and years), to establish and validate the mortality rates assigned to the condition factors. The RAMP method evaluates mortality over only a short term (3 days) and in a holding-tank environment. The conclusions that can be drawn from these two approaches are not comparable since the time frames and contexts of their relative application are considerably different. On this basis alone, we would not expect the results to be comparable. The current method has the benefit of providing a relationship between condition at release and long-term survival. Neither delayed nor total mortality can be assessed through the proposed experiment.
2. While the RAMP and current procedures share several assessment criteria (alive/dead, operculum closure, muscle tone, mouth closure) each requires some additional measurements. For the RAMP procedure, the additional measurements are gag response and vestibular-ocular response. For the current procedure, the additional measurements are injury category, as well as bleeding location and severity. The reliance of the RAMP procedure on reflex actions, without consideration of gross morphological injuries or bleeding can lead the RAMP assessment to ignore significant factors in survival. In addition,

the RAMP procedures require a separate cradle or holding device to be used during condition assessment.

In the absence of an understanding of the longer-term mortality of released fish in the natural environment, the experiment using the RAMP procedures will assess only short-term mortality will underestimate total mortality of trawl-caught halibut and its consequent impact on the halibut population.

IPHC staff will be in attendance at the meeting and can answer any questions the Council or SSC may have on this issue.

Sincerely yours,



Bruce M. Leaman
Executive Director

cc: Commissioners

Permit Issued

A notice of the receipt of an application for a scientific research permit (10093 and 10094) was published in the **Federal Register** on January 16, 2008 (73 FR 2900). Permits 10093 and 10094 were issued to CDFG Region 1 and Region 3 on September 23, 2008.

Permits 10093 and 10094 authorizes CDFG Region 1 and Region 3; respectively, intentional non-lethal take, and unintentional lethal take of the following ESA-listed salmonids: juvenile SONCC coho salmon, CCC coho salmon, CC Chinook salmon, NC steelhead, CCC steelhead, S-CCC steelhead, and SC steelhead; adult CCC coho salmon, CC Chinook salmon, NC steelhead, CCC steelhead, and S-CCC steelhead; and adult carcasses of SONCC coho salmon, CCC coho salmon, CC Chinook salmon, NC steelhead, CCC steelhead, and S-CCC steelhead. The take activities associated with juvenile and adult ESA-listed salmonid studies include; capture (backpack electrofishing, beach seine, rotary screw trap, fish ladder trap, resistance board weir, flume-type-raceway/finger-weir-trap, hook and line and funnel/fyke trap), anesthetizing (optional), handling (identify, measure, and weigh), tissue sampling (fin-clip), scale sampling, marking (fin-clips and/or opercular-hole-punch), tagging (PIT and/or Floy tags) and release of fish. Take activities associated with adult ESA-listed salmonid carcass studies include; handling (identify, measure, and count), marking (opercular-hole-punch and/or cut-in-half), tagging (hog-ring), retaining (head; adipose clipped fish), scale sampling, tissue sampling (fin-clip), and release of fish.

Permits 10093 and 10094 authorizes unintentional lethal take of juvenile SONCC coho salmon, CCC coho salmon, CC Chinook salmon, NC steelhead, CCC steelhead, S-CCC steelhead, and SC steelhead not to exceed 2.5 percent of fish captured. Permits 10093 and 10094 authorizes unintentional lethal take of adult CCC coho salmon, CC Chinook salmon, NC steelhead, CCC steelhead, and S-CCC steelhead not to exceed 2 percent of fish captured.

Permits 10093 and 10094 are for research to be conducted in streams and estuaries throughout the State of California. The purpose of the research is to support conservation and recovery planning of ESA-listed salmonids, address information needs identified by CDFG Region 1 and Region 3, and contribute to the general body of scientific knowledge pertaining to ESA-

listed salmonids. Permits 10093 and 10094 expire on December 31, 2013.

Dated: January 14, 2009.

Angela Somma,
Chief, Endangered Species Division, Office
of Protected Resources, National Marine
Fisheries Service.

[FR Doc. E9-1121 Filed 1-21-09; 8:45 am]
BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648-XM62

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 for exempted fishing permit.

SUMMARY: This notice announces receipt of an exempted fishing permit (EFP) application from the North Pacific Fisheries Foundation. If granted, this permit would allow the applicant to collect approximately 100 Pacific halibut caught in the non-pelagic trawl gear fishery for flatfish to evaluate the accuracy of two models for predicting delayed mortality of individual trawl caught halibut. This activity has the potential to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act, and the Pacific Halibut Act by assessing techniques for improving survival of halibut in non-pelagic trawl fisheries and improving the accuracy of estimates of halibut mortality. Comments will be accepted at the February 4-10, 2009, North Pacific Fishery Management Council (Council) meeting in Seattle, WA.

DATES: Interested persons may comment on the EFP application during the Council's February 4-10, 2009, meeting in Seattle, WA.

ADDRESSES: The Council meeting will be held at the Renaissance Hotel, 515 Madison Street, Seattle, WA.

Copies of the EFP application and the basis for a categorical exclusion under the National Environmental Policy Act are available by writing to the Alaska Region, NMFS, P. O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian. The application also is available from the Alaska Region, NMFS website at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907-586-7442 or jeff.hartman@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI) under the Fishery Management Plan for Groundfish of the BSAI (FMP), which the Council prepared under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the BSAI 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 (Halibut Act). 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).

NMFS has received an application for an EFP from the North Pacific Fisheries Foundation (NPF). Under this EFP, the NPF would evaluate methods for projecting survival of released halibut, which could improve NMFS's estimates of halibut mortality in the non-pelagic trawl gear fishery for flatfish and identify techniques for minimizing mortality of this species in trawl fisheries.

Background

Regulations implemented by the IPHC allow Pacific halibut to be commercially harvested by the directed North Pacific longline fishery only. Halibut caught incidentally in other fisheries, such as non-pelagic trawl fisheries, must be recorded and returned to the ocean as soon as possible. The North Pacific Fishery Management Council establishes a seasonal maximum biomass of halibut bycatch adjusted for the estimated halibut discard mortality factor for each non-halibut directed fishery. Fisheries close when they reach their seasonal mortality cap even if the catch of the target species is less than the seasonal quota for the directed

fishery. In the case of Bering Sea flatfish fisheries, seasons have been cut short by the halibut bycatch cap before the quotas have been reached. Accurately accounting for halibut in NMFS estimates of mortality and assuring that each halibut returned to the sea has the highest possible chance of survival are therefore high priorities for the IPHC's, the Council's, and NMFS's management goals for both halibut and groundfish.

Before halibut are discarded at-sea, the catch must first be estimated by at-sea observers. In order to credibly account for halibut catch and to ensure that the catch and discard of halibut is observed, NMFS prohibits any removal of halibut from a cod end, bin, or conveyance system prior to being observed and enumerated by an at-sea observer.

With the implementation of Amendment 80 to the FMP on September 14, 2007 (72 FR 52668), allocation of halibut was modified for certain vessels, but halibut bycatch continued to limit fishing in some fisheries. The Amendment 80 sector received an initial allocation of 2,525 mt of halibut bycatch mortality, but that allocation will decrease by 50 mt per year until it reaches 2,325 mt in 2012 and subsequent years. In certain years, this amount is less than the sector's historic catch; therefore, finding ways to accurately estimate halibut survival is important for this sector.

This application for an EFP from NPFV proposes to study two methods for predicting halibut survival. It would allow researchers onboard a catcher processor vessel to collect approximately 100 halibut caught with non-pelagic trawl gear and evaluate a reflex action mortality predictor (RAMP) for predicting delayed mortality in individual trawl-caught halibut. The RAMP method would be combined with and compared to the existing IPHC halibut mortality predictor currently used by observers. To assess and compare these two methods, halibut would be held in live tanks on a vessel and assessed by each method. The collection and holding of halibut in this manner requires an exemption from regulations that prohibit retention of halibut by trawl gear, and requiring that all halibut caught with this gear be released as soon as possible (§ 679.7(a)(12), and § 679.21(b)(2)(ii)).

This EFP would apply for the period of time required to complete the experiment during 2009, in areas open to directed fishing for flatfish. It would be of limited scope and duration and would not be expected to change the nature or duration of the groundfish fishery, fishing practices or gear used by

this vessel, or the amount or species of fish caught.

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

In accordance with § 679.6, NMFS has determined that the proposal warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council will consider the EFP application during its February 4-10, 2009, meeting, which will be held at the Renaissance Hotel in Seattle, Washington. The applicant has been invited to appear in support of the application.

Public Comments

Interested persons may comment on the application at the February 2009 Council meeting during public testimony. Information regarding the meeting is available at the Council's website at <http://www.fakr.noaa.gov/npfmc/council.htm>. Copies of the application and categorical exclusion are available for review from NMFS (see ADDRESSES).

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

Dated: January 15, 2009.

Emily H. Menashes,
Acting Director, Office of Sustainable
Fisheries, National Marine Fisheries Service.
[FR Doc. E9-1184 Filed 1-21-09; 8:45 am]
BILLING CODE 3510-22-S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSA Docket No. 09-C0003]

Lasko Products Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the *Federal Register* in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Lasko Products Inc., containing a civil penalty of \$500,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 5, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09-C0003, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Belinda V. Bell, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7592.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 9, 2009.

Todd A. Stevenson,
Secretary.

United States of America
Consumer Product Safety Commission
In the Matter of Lasko Products Inc.,
a corporation

[CPSA Docket No. 09-C0003]

Settlement Agreement

1. This Settlement Agreement ("Agreement") is made by and between the staff ("staff") of the U.S. Consumer Product Safety Commission ("Commission") and Lasko Products Inc. ("Lasko"), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"). This Agreement and the incorporated attached Order ("Order") resolve the staffs allegations set forth below.

The Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of the CPSA, 15 U.S.C. 2051-2089.

3. Lasko is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal corporate office located in West Chester, Pennsylvania.

4. At all times relevant herein, Lasko designed, manufactured and sold portable electric fans, including those that are the subject of the Agreement and Order.

Staff Allegations

5. Between 1999 and 2001, Lasko manufactured and distributed approximately 5.6 million of the subject portable electric fans under the following brand names and model numbers: Lasko 2135, 3300, 3400, 3410, 3510, 3515, 3521, 3550, 3700, 3723,