

## **COUNCIL OPERATING PROCEDURE**

### **Protocol for Consideration of Exempted Fishing Permits for Shared Ecosystem Component Species**

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Approved by Council: 09/11/15

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#### **DEFINITION**

An exempted fishing permit (EFP) is a one-year Federal permit, issued by the National Marine Fisheries Service (NMFS), which authorizes a party to engage in an activity that is otherwise prohibited by the Magnuson-Stevens Fishery Conservation and Management Act or other fishery regulations, for the purpose of collecting limited experimental data. The Pacific Fishery Management Council's (Council's) four fishery management plans (FMPs) allow for EFPs for Shared Ecosystem Component (Shared EC) species, consistent with Federal regulations at 50 CFR§600.475. EFPs can be issued to Federal or state agencies, marine fish commissions, or other entities, including individuals. An EFP applicant need not be the owner or operator of the vessel(s) for which the EFP is requested. The NMFS Regional Administrator may require any level of industry-funded observer coverage for these permits.

#### **PURPOSE**

This Council Operating Procedure (COP) provides a standard process for the Council, its advisory bodies, and the public to consider EFP proposals for Shared EC Species. The specific objectives of a proposed exempted fishing activity may vary. EFPs can be used to explore ways to develop stock surveys and assessments, explore the potential for a new non-tribal commercial fishery on Shared EC Species, or to evaluate current and proposed management measures. The scope of this COP is limited to EFP proposals for exempted commercial fisheries intended to target species identified in all four of the Council's FMPs as Shared EC species for the purpose of developing scientific information useful to evaluating the potential for a future fishery on one or more Shared EC species.

#### **PROTOCOL**

##### **A. Submission**

1. The Council and its advisory bodies [Ecosystem Advisory Subpanel (EAS), Scientific and Statistical Committee (SSC), and any applicable FMP-specific advisory bodies] shall review EFP proposals prior to issuance; the advisory bodies may provide comment on methodology and relevance to science and management data needs and make recommendations to the Council accordingly. The public may also comment on EFP proposals.
2. Completed applications for EFPs from individuals or non-government agencies for Council consideration must be received by the Council for review at least two weeks prior to the November Council meeting.
3. Applications for EFPs from Federal or state agencies must meet the briefing book deadline for the November Council meeting.

## B. Proposal Contents

1. EFP proposals must contain sufficient information for the Council to determine:
  - a. There is adequate justification for an exemption to the regulations;
  - b. The potential impacts of the exempted activity have been adequately identified; and
  - c. The exempted activity would be expected to provide information useful to management and use of Shared EC Species, other Council-managed resources, and other federally-managed resources.
2. Applicants must submit a completed application in writing that includes, but is not limited to, the following information:
  - a. Date of application;
  - b. Applicant's names, mailing addresses, and telephone numbers;
  - c. A statement of the purpose and goals of the experiment for which an EFP is needed, including a general description of the arrangements for the disposition of all species harvested under the EFP;
  - d. Valid justification explaining why issuance of an EFP is warranted;
  - e. A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;
  - f. An expected total duration of the EFP (i.e., number of years proposed to conduct exempted fishing activities);
  - g. Number of vessels covered under the EFP;
  - h. A description of the species (target and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment; this description should include harvest and take estimates of overfished species and protected species;
  - i. A description of a mechanism, such as at-sea fishery monitoring, to ensure that the harvest limits for targeted and incidental species are not exceeded and are accurately accounted for;
  - j. A description of the proposed data collection and analysis methodology;
  - k. A description of how vessels will be chosen to participate in the EFP;
  - l. 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; and
  - m. The signature of the applicant.

The Council and/or its advisory bodies may request additional information necessary for their consideration.

## C. Review and Approval

1. The EAS and any other applicable advisory bodies identified by the Council will review EFP proposals in November and make recommendations to the Council for action; the Council will consider those proposals for preliminary action. Final action on EFPs will occur at the March Council meeting. Only those EFP applications that were considered in November may be considered in March; EFP applications received after the November Council meeting for the following calendar year will not be considered.
2. EFP proposals must contain a mechanism, such as at-sea fishery monitoring, to ensure that the harvest limits for targeted and incidental species are not exceeded and are accurately accounted for. Also, EFP proposals must include a description of the proposed data collection and analysis methodology used to measure whether the EFP objectives will be met.

3. The Council will give priority consideration to those EFP applications that:
  - a. Emphasize resource conservation and management with a focus on evaluating the effects of harvesting Shared EC Species on the larger California Current Ecosystem;
  - b. Can assess the potential effects of a directed fishery for one or more Shared EC Species on:
    - i. Any Council-managed species;
    - ii. Species that are the prey of any: Council-managed species, marine mammal species, seabird species, sea turtle species, or ESA-listed species;
    - iii. Habitat that is identified as essential fish habitat or otherwise protected within one of the Council's FMPs, critical habitat identified or protected under the Endangered Species Act, or habitat managed or protected by state or tribal fishery or habitat management programs;
    - iv. Species that are subject to state or tribal management within 0-3 miles offshore of Washington, Oregon, or California; or
    - v. Species that migrate beyond the U.S. EEZ.
  - c. Encourage full retention of fishery mortalities;
  - d. Involve data collection on fisheries stocks and/or habitat; and
  - e. Encourage innovative gear modifications and fishing strategies to reduce bycatch.
4. Review by the EAS and any other applicable advisory bodies will consider the following questions:
  - a. Is the application complete?
  - b. Is the EFP proposal consistent with the goals and objectives of the Council's Fishery Ecosystem Plan and FMPs?
  - c. Does the EFP account for fishery mortalities by species?
  - d. Can the harvest estimates of overfished species and/or protected species be accommodated?
  - e. Does the EFP meet one or more of the Council's priorities listed above?
  - f. Is the EFP proposal compatible with the Federal observer program effort?
  - g. What infrastructure is in place to monitor, process data, report on results, and administer the EFP?
  - h. How will achievement of the EFP objectives be measured?
  - i. If this EFP is a re-issue of a previously issued EFP, what are the benefits to the fisheries management process to continue an EFP that began the previous year?
  - j. If integrating data into management is proposed, what is the appropriate process?
  - k. What is the funding source for at-sea monitoring?
  - l. Has there been coordination with appropriate state and Federal enforcement management and science staff?
5. SSC Review:
  - a. All EFP applications should first be evaluated by the EAS for consistency with the goals and objectives of the Fishery Ecosystem Plan and the Council's FMPs;
  - b. The SSC will evaluate the scientific merits of the application and will specifically evaluate the application's: (1) problem statement; (2) data collection methodology; (3) proposed analytical and statistical treatment of the data; (4) the generality of the inferences that could be drawn from the study; and (5) methodology for determination of potential ecological and economic impacts.

6. An EFP may be denied if it is determined that the application fails to include the required content or meet EFP requirements.

#### D. Other considerations

1. EFP candidates or participants may also be denied future EFP permits under the following circumstances:
  - a. If the applicant/participant (fisher/processor) has violated past EFP provisions, or has been convicted of a crime related to commercial fishing regulations punishable by a maximum penalty range exceeding \$1,000 within the last three years;
  - b. Within the last three years assessed a civil penalty related to violations of commercial fishing regulations in an amount greater than \$5,000; or
  - c. Has been convicted of any violation involving the falsification of fish receiving tickets including, but not limited to, mis-reporting or under-reporting of fisheries landings. Documented fish receiving tickets indicating mis-reporting or under-reporting of fisheries landings will not qualify for consideration when fish reporting documents are used as part of the qualifying criteria for EFPs.

#### E. Report Contents

1. The EFP applicant must present a preliminary report on the results of the EFP and the data collected (including catch data) to the EAS and any other applicable advisory bodies identified by the Council at the November Council meeting of the following year.
2. A final written report on the results of the EFP and the data collected must be presented to the EAS, appropriate advisory bodies, and the Council at the March Council meeting. Those EFPs containing data analysis that could benefit from a scientific review may be forwarded to the SSC for comment.
3. The final report should include:
  - a. A summary of the work completed;
  - b. An analysis of the data collected; and
  - c. Conclusions and/or recommendations.Timely presentation of results is required to determine whether future EFPs will be recommended.