

COUNCIL OPERATING PROCEDURE
Protocol for Consideration of Exempted Fishing Permits for
Highly Migratory Species Fisheries

Approved by Council: 11/02/05

Revised: 8/6/14

DEFINITION

An exempted fishing permit (EFP) is a federal permit, issued by the National Marine Fisheries Service, that authorizes a vessel to engage in an activity otherwise prohibited by the Magnuson-Stevens Fishery Conservation and Management Act (MSA) or other fishery regulations for the purpose of collecting limited experimental data. 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.

PURPOSE

The specific objectives of an EFP may vary. The Pacific Fishery Management Council (Council) fishery management plan (FMP) for West Coast highly migratory species (HMS) fisheries provides for EFPs to promote increased utilization of underutilized species, realize the expansion potential of the domestic HMS fisheries, and increase the harvest efficiency of the HMS fisheries consistent with the MSA and the management goals of the FMP. However, EFPs are commonly used to explore ways to encourage innovation and efficiency in the fisheries, measure bycatch associated with different fishing gears and/or fishing strategies (e.g., during certain times or in certain areas), and to evaluate current and proposed management measures.

PROTOCOL

A. Submission

1. The Council and its advisory bodies [HMS Management Team (HMSMT), HMS Advisory Subpanel (HMSAS) and Scientific and Statistical Committee (SSC)] should review EFP proposals prior to issuance; the advisory bodies may provide comment on methodology and relevance to 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 June Council meeting.
3. Applications for EFPs from federal or state agencies must meet the briefing book deadline for the June Council meeting.

B. Proposal Contents

1. EFP proposals must contain sufficient information for the Council to determine if:
 - a. There is adequate justification for an exemption to the regulations;
 - b. The potential impacts of the exempted activity have been adequately identified;

- c. The exempted activity would be expected to provide information useful to management and use of HMS fishery 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, including harvest 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;
 - m. The signature of the applicant(s);

The HMSMT, HMSAS, SSC, and/or Council may request additional information necessary for their consideration.

C. Review and Approval

1. The HMSMT and HMSAS will review EFP proposals in June 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 September Council meeting. Only those EFP applications that were considered in June may be considered in September; EFP applications received after the June 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 bycatch reduction (highest priority);
 - b. Encourage full retention of fishery mortalities;
 - c. Involve data collection on fisheries stocks and/or habitat;
 - d. Encourage innovative gear modifications and fishing strategies to reduce bycatch;
 - e. Encourage the development of new market opportunities;
 - f. Explore the use of incentives to increase utilization of underutilized species while reducing bycatch of non-target species and/or interactions with protected species.
4. The HMSMT review will consider the following questions:
 - a. Is the application complete?
 - b. Is the EFP proposal consistent with the goals and objectives of the West Coast HMS FMP?
 - 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, and administer the EFP?
 - h. How will achievement of the EFP objectives be measured?
 - i. Is the data ready to be applied? If so, should it be used, or rejected? If not, when will sufficient data be collected to determine whether the data can be applied?
 - j. What are the benefits to the fisheries management process to continue an EFP that began the previous year?
 - k. If integrating data into management is proposed, what is the appropriate process?
 - l. What is the funding source for at-sea monitoring?
 - m. 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 HMSMT for consistency with the goals and objectives of the HMS FMP;
 - b. When a proposal is submitted to the HMSMT that includes a significant scientific component that would benefit from SSC review, the HMSMT can refer the application to the SSC for comment;
 - c. In such instances, 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; and (4) the generality of the inferences that could be drawn from the study.

D. Other considerations

1. EFP candidates or participants may 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;
 - 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 HMS. Documented fish receiving tickets indicating mis-reporting or under-reporting of HMS 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 HMSMT at the June 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 HMSMT and the Council at the September 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;
 - c. Conclusions and/or recommendations;
 - d. Timely presentation of results is required to determine whether future EFPs will be recommended.