

6.12 Exempted Fishing

[8.4.12 Exempted Fishing]

Background

Existing Federal Procedures. Exempted fishing is defined to be fishing practices that are new to a fishery and not otherwise allowed under an FMP. The NMFS Regional Administrator, using Federal EFP (Exempted Fishing Permit) procedures, may authorize the targeted or incidental harvest of HMS for experimental or exploratory fishing that would otherwise be prohibited. Applicants must submit their application package at least 60 days before the desired effective date of the EFP, provide a statement of purpose and goals of the EFP activity, the species (target and incidental) expected to be harvested, arrangements for disposition of all regulated species and any anticipated impacts on marine mammals or endangered species, and provide the times and places fishing will take place and the type, size and amount of gear to be used. There are no specific requirements. The Administrator may restrict the number of experimental permits by total catch, time, area, bycatch, incidental catch or protected species takes. The NMFS Regional Administrator may require any level of industry-funded observer coverage for these experimental permits.

Exempted fisheries are expected to be of limited size and duration and must be authorized by an EFP issued for the participating vessel in accordance with the criteria and procedures specified in 50 CFR §600.745. The duration of EFPs will ordinarily not exceed one year. Permits will not be renewed automatically. An application must be submitted to the Regional Administrator for each year. A fee sufficient to cover administrative expenses may be charged for EFPs. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested as long as the proposed activity is compatible with limited entry and other management measures in the FMP.

The Regional Administrator or Director may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing, including, but not limited to:

- (a) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.
- (b) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.
- (c) The time(s) and place(s) where exempted fishing may be conducted.
- (d) The type, size, and amount of gear that may be used by each vessel operated under the EFP.
- (e) The condition that observers, a vessel monitoring system, or other electronic equipment be carried on board vessels operated under an EFP, and any necessary conditions, such as pre-deployment notification requirements.
- (f) Reasonable data reporting requirements.
- (g) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.
- (h) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures as set out in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

Proposed Additional FMP Requirements for an Exempted Fishing Permit. This FMP places additional requirements for authorizing an EFP for targeting HMS species. An EFP proposal will be required to follow a specific Council protocol and be reviewed by the Council prior to application to NMFS. The intent of the protocol is to ensure the Council has adequate information on all aspects of the proposed fishery and has adequate time to consider, review and formulate recommendations. This protocol will be available from the Council. It will require additional detailed information and analysis beyond those specifically required for an NMFS EFP. The protocol will specify timing for submissions and timing for Council review.

This FMP authorizes mandatory data reporting and mandatory on-board observers for vessels with exempted fishing permits (*CHAPTER 9, SECTION 9.2.4.6*). Installation of vessel monitoring units (VMS) aboard vessels with exempted fishing permits may be also required.

The FMP would require that applicants submit for Council review and approval an initial EFP plan prior to formal application to NMFS, following a specific Council supplied EFP protocol, which is to be developed by the HMS Management Team. The specific protocol will be available from the Council as a Council Operating Procedure. The protocol will include, but not be limited to, the following elements:

- schedule and procedure for submitting EFP applications;
- format for applications;
- qualification criteria for applicants;
- Council internal review procedures;
- relevant laws and regulations that must be followed.

Rationale: To serve its constituents, the Council needs a formal process through which it can review and make recommendations on the EFP applications to NMFS.

The Council will review, comment, and make recommendations on the plan and may require changes or request additional information. The final EFP plan and Council recommendations will then be provided by the applicant to NMFS for action. An example of a fishery-specific proposal is shown in *CHAPTER 9 SECTION 9.2.5.2.1* under “Example of Exempted Longline Fishery Permit with Experimental Design.” NMFS review and any subsequent issuance of an EFP would then proceed according to regulations specified in Code of Federal Regulations (50 CFR §600.745) pursuant to the procedures and criteria in that section.

6.13 Temporary Adjustments due to Weather

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The Council will consider and may provide, after consultation with the U.S. Coast Guard and persons utilizing the fishery, temporary adjustments for access to the fishery by vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of the vessels, except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery. No adjustments due to weather are proposed at this time as the Council has no information from fishery participants or others to indicate that particular accommodations are needed to provide reasonable opportunity to harvest HMS. There are no quotas or allocations that could not be harvested due to poor weather.

6.14 Safety of Life at Sea

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National Standard 10 (NS-10) requires that conservation and management measures shall, to the extent practicable, promote the safety of human life at sea. The substantive requirements of NS-10 are fulfilled by Council, NMFS, USCG, and fishing industry consultation on the nature and extent of any adverse effects that proposed management measures may have on safety of human life at sea. The purpose of consultation is to identify and mitigate, to the extent practicable, any adverse effects. 50 C.F.R. §600.355, which implements NS-10, provides lists of safety considerations and mitigation measures that could be considered. To fulfill NS-10, the Council will utilize existing Council and Council subgroup meeting procedures, and the framework provisions of the FMP. Except for automatic actions such as quota closures, the framework provisions require public comment and Council action before management actions are implemented. Safety and weather issues can be considered during the Council process. The USCG has a Council representative who regularly comments on proposed management measures. In addition, the USCG participates on the Council's Enforcement Consultants Committee, which is another forum for considering safety and weather issues. The HMS Management Team and Advisory Subpanel also hold public meetings where safety and weather concerns can be raised and addressed. Mitigation measures may be incorporated into pre-season and in-season actions under the framework procedures.

A NMFS regulation at 50 CFR 600.745 applies to any fishing vessel required to carry an observer as part of a mandatory observer program or carrying an observer as part of a voluntary observer program under the Magnuson-Stevens Act, MMPA (16 U.S.C. 1361 et seq.), the South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.), or any other U.S. law. Observers may not depart on a fishing trip aboard a vessel that does not comply with United States Coast Guard safety requirements or that does not display a current commercial fishing vessel safety examination decal. All vessels required to carry an observer must meet Coast Guard safety requirements and display a current safety decal (issued within the previous two years). Vessels not meeting these requirements are deemed unsafe for purposes of carrying an observer and must correct deficiencies before departing port. The vessel owner or operator must also allow an observer to visually inspect any safety or accommodation requirement if requested. Observers are required to complete a pre-trip