



New England Fishery Management Council

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John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

March 5, 2008

Mr. Alan Risenhoover, Director
Office of Sustainable Fisheries
1315 East-West Highway
SSMC3
Silver Spring, MD 20910

Re: NEFMC Comments on the December 21, 2007 Proposed Rule: Experimental Fishing Permit Process, Exempted Fishing Permits and Scientific Research Activities

Dear Mr. Risenhoover:

Thank you for the opportunity to comment on the proposed rule concerning the Experimental Fishing Permit (EFP) process and other associated changes discussed in the agency's 12/21/07 document. The New England Fishery Management Council (Council) and its Research Steering Committee have tracked this subject for a number of years and, because of our keen interest and involvement in cooperative research and research set-aside programs, offer the following comments.

For years the Council has supported a consistent and expedited EFP process that enables cooperative research to be conducted in a timely, cost-effective manner without compromising the scientific rigor of approved projects. While there have been improvements to this process in the Northeast, particularly in eliminating the backlog of projects, impediments remain. And despite some proposed modifications that may be helpful, we are left with more questions than answers.

First and foremost, we believe the Regional Councils were not engaged enough in the preparation of the proposed rule. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 explicitly calls for the Secretary to promulgate regulations in consultation with the Councils. While well-intended, we do not think the several staff-to-staff conference calls initiated by Silver Spring accomplished the required consultation.

The New England Council also believes the proposed rule neglects the mandate to create a regionally-based process. We recognize the document contains a number of remedies to some specific regional problems, but allows little if any flexibility to address regional problems overall. This is a very important issue for researchers, fishermen and managers in our area given that the EFPs from the Northeast constitute a very large percentage of the EFPs issued overall.

The New England Council's specific issues are as follows:

We see very little if any streamlining in the program as outlined in the proposed rule. Where streamlining does occur, for example in exempting research projects funded by quota set-asides from the requirement to publish a *Federal Register (FR)* notice, the process used as an example to justify elimination of the *FR* step is not consistent with the NEFMC fishery management plan process. In the case of the current Scallop and Monkfish Fishery Management Plan (FMP) Research Set-Aside Programs, specific experiments are neither identified nor analyzed through the FMP process. Only the impacts on fishing mortality are accounted for through the establishment of research Total Allowable Catches. Furthermore, the reviews that are conducted by the agency's Regional Office staff and through the NOAA Grants process serve defined purposes but do not allow for meaningful input by the full Council.

The Council believes this particular attempt at streamlining effectively blocks its ability to comment on projects funded through mechanisms provided for in its own FMPs. As an alternative and outside of the EFP process, we believe much closer scrutiny should be given to streamlining the NOAA Grants process under which these programs are administered.

We also suggest streamlining in the case of compensation fishing, which in the proposed rule appears to always require a separate EFP. Where possible, and this may only be feasible in New England, the Council suggests that at the same time an EFP or Letter of Acknowledgement (LOA) is issued to principal investigators, an EFP is also issued to the vessel that will undertake the associated compensation fishing. This should be allowed if the specifics of the compensation fishing are properly described at the time the initial project EFP is granted (i.e. compensation vessel identified, amount of pounds harvested or days stated, location of activity, catch reporting, notification to the agency when fishing will commence, etc.).

The attempt to classify "conservation engineering" as scientific research appears to be a good idea, but raises questions not clarified in the proposed rule. For instance, conservation engineering is proposed to be something that can only be done on scientific research vessels; everything else is "gear testing" for which there can be no retention of fish, or so it appears, even under an EFP. Further discussion is needed on this issue, particularly with the affected parties who have participated in cooperative research.

Two additional but related problems could be remedied by initiating discussion with affected parties in our region: 1) fishing vessels continue to be excluded from the definition of a scientific research vessel; and 2) the requirement for an EFP for “conservation engineering” projects is dependent on whether the research is conducted on a scientific research vessel, for which an LOA is granted, or a commercial fishing vessel, which would require an EFP.

The proposed rule would allow NMFS observers and biological technicians to sample fish on commercial vessels without an EFP, but would require university and other fish sampling programs to have an EFP. We believe this is another instance where streamlining can be accomplished and recommend the agency initiate a dialogue with states, universities and institutions that have participated in the EFP process to develop a better alternative.

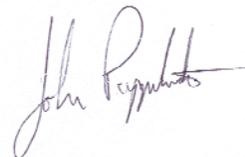
The proposed rule appears to maintain the NEPA review requirements for issuing EFPs, thus keeping the process administratively burdensome. Similarly, the proposed rule restricts the ability of the Regional Administrator to issue an LOA for projects that have not addressed potential Endangered Species Act or Marine Mammal Protection Act issues. While this sounds like one-stop shopping, we do not believe this is the case and see few benefits to the proposal and more likely an even more protracted process.

Overall, the Council finds the proposed rule does not contribute toward an expedited EFP process, the intent of this exercise, nor are regional issues addressed in a manner that would promote the issuance of EFPs to qualified applicants. Many of the proposals even hinder progress that has already been made in the Northeast. We have found the proposals complex, unclear in structure and intent and confusing when attempting a comparison to what currently exists.

For these reasons, the New England Council strongly recommends that the National Marine Fisheries Service withdraw the current proposed rule and hold, at least in New England, a regional workshop to better understand the impediments that must be addressed in the EFP process so the benefits of cooperative research can be maximized. The Council and its staff firmly believe such an exercise will yield a revised and improved proposed rule and are willing to assist in bringing the interested parties together.

Meanwhile, the Council looks forward to working with you as development of the rule continues. If you have any questions, please feel free to contact Executive Director Paul Howard or staff member Patricia Fiorelli at 978.465.0492, or via email at poward@nefmc.org and pfiorelli@nefmc.org.

Sincerely,



John Pappalardo
Chairman