

## COUNCIL OPERATING PROCEDURE

### Protocol for Consideration of Exempted Fishing Permits for Coastal Pelagic Species Fisheries

Approved by Council: 11/4/2012

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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) fishery management plan (FMP) for coastal pelagic species (CPS) allows for EFPs, 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. The specific objectives of a proposed exempted fishing activity may vary. EFPs can be used to explore ways to improve stock surveys and assessments, encourage innovation and efficiency in the fisheries, or to evaluate current and proposed management measures.

#### GENERAL PROCESS

The Council process for considering and recommending CPS EFP proposals is an annual one that is synchronized with the decision-making process for establishing annual harvest specifications and management measures. The Council's EFP process begins at the November meeting, well in advance of EFP research that is likely to occur during the summer field season.

Any EFP proposals recommended for further consideration are typically given final consideration at the ~~March-April meeting, although the Council may schedule further consideration at the April meeting if deemed necessary.~~ After the Council takes final action (i.e., providing a recommendation on the proposal), the applicants then submit the EFP application to the NMFS ~~Southwest-West Coast~~ Region. Council staff will transmit the Council's recommendation directly to the NMFS ~~West CoastSouthwest~~ Region. The Council may task the Scientific and Statistical Committee (SSC) or other advisors to do a more thorough review of specific EFP proposals prior to the ~~March-April~~ Council meeting. In all cases, EFP materials must be submitted prior to the briefing book deadline for the relevant Council meeting. The CPS EFP proposal timeline is provided below:

### November Council meeting:

- Proponents of new EFP proposals (those that include new EFP research activities or research activities that are substantially different from previously-conducted EFP research) submit a full proposal, consistent with Section A below, and should be prepared to describe the proposal to the ~~SSC~~, CPS Management Team (CPSMT), CPS Advisory Subpanel (CPSAS), and the full Council. New EFP proposals are considered by the Council and may be adopted for public review.
- Proponents of recurring EFP proposals (those that are substantially similar to previously conducted EFP research) submit a letter of intent, with a copy of the final EFP proposal from the previous year. The letter of intent should specify the general timing, the amount of fish that will be requested, general survey protocols, and the purpose of the EFP research, along with any anticipated changes from the previous years' research.
- The CPSMT may refer an EFP proposal for SSC review and comment (see section B below)
- Council advisory bodies and the public may comment on proposals.

### ~~March~~ April Council meeting:

- Proponents of both new and recurring EFP research submit final versions of their proposals.
- The ~~SSC~~, CPSMT, ~~and~~ CPSAS, and possibly the SSC (see section B below) review the proposal(s) and submit a report make recommendations to the Council.
- Council advisory bodies and the public may comment on proposals.
- The Council reviews the proposal(s) and takes final action regarding support for the EFP proposal.

### April Council meeting:

- ~~As needed.~~

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## A. 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 CPS 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. A statement whether the applicant intends to continue the EFP activities for more than one year. NMFS issues EFPs for only one year at a time. However, if an EFP proposal has a multi-year focus, this information should be included in the proposal.
  - g. Number of vessels and processors covered under the EFP, as well as vessel names, skipper names, and vessel ID and permit numbers.
  - h. A description of the species to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment; this description should include estimates of harvest impacts to non-target species.
  - i. A reasonable justification for the amount of EFP fish to be harvested. For statistical purposes, this could include a power analysis or other means to estimate a reasonable amount or number of fish. Any other justification that supports the amount of fish proposed for EFP activities should also be included.
  - j. A description of a mechanism, such as at-sea or dockside fishery monitoring, to ensure that the harvest or impact limits for targeted and incidental species are not exceeded and are accurately accounted for and reported.
  - k. A description of the proposed data collection methods, including procedures to ensure and evaluate data quality during the experiment, and data analysis methodology and timeline of stages through completion.
  - l. A description of how vessels will be chosen to participate in the EFP.
  - m. For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will occur, and the type, size, and amount of gear to be used.
  - n. The signature of the applicant.
3. The CPSMT, CPSAS, SSC, and/or Council may request additional information necessary for their consideration.

## B. Review and Approval

1. ~~The CPSMT will consider~~ ~~Review of any proposals will include, but are not limited to, consideration~~ the following questions:
  - a.    Is the application complete?
  - b. Is the EFP proposal consistent with the goals and objectives of the CPS FMP?
  - c. Can catch of target and impacts to non-target species be adequately monitored and reported in a timely manner?
  - d. Does the EFP account for fishery mortalities, by species?
  - e. Can the impact estimates of overfished and/or protected species be accommodated?

- 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. What are the benefits to the fisheries management process?
- j. If the EFP proposes to integrate the data into management, what is the appropriate process?
- k. What is the funding source for catch monitoring?
- l. Has there been coordination with appropriate state, tribal, and Federal enforcement, management, and science staff?
- m. Are there any outstanding enforcement issues related to the proposed exempted regulation?
- n. Is the tonnage request appropriate?

## 2. SSC review

- a. All EFP applications should first be evaluated by the CPSMT for consistency with the goals and objectives of the CPS FMP;
- b. When a proposal is submitted to the CPSMT that includes a significant scientific component that would benefit from SSC review, the CPSMT 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.

## C. Report Contents

- 1. A final written report on the results of the EFP and the data collected must be presented in a timely manner, following completion of the EFP research activities.
  - a. If the data collected under an EFP is intended to be used for stock assessment purposes, it must be submitted to the Stock Assessment Team in accordance with the Council's Terms of Reference for stock assessments. (Typically, this requires submitting the information at least four weeks in advance of the meeting at which the assessment will be reviewed.)

The final report should include:

- a. A summary of the work completed.
- b. An analysis of the data collected.
- c. A description of any changes to protocols, field activities, or other changes to the EFP research.
- d. Conclusions and/or recommendations.

## 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 \$5,750;
- e.c. Has been assessed a civil penalty or been convicted of a crime involving the falsification of fish receiving tickets including, but not limited to, mis-reporting or under-reporting of CPS.

PFMC  
08/18/22