

### **Proposed Revisions to Council Operating Procedure 19**

Council Operating Procedure (COP) 19 describes the Pacific Fishery Management Council's (Council's) Protocol for Consideration of Exempted Fishing Permits for Groundfish Fisheries. Over the course of the summer, Council staff discussed the need to clarify roles and responsibilities of the Groundfish Management Team (GMT) and the Science and Statistical Committee (SSC) as currently described in COP 19. Staff initiated these discussions after noting that the current wording was causing confusion in our advisory bodies and with our partner agencies. Staff determined COP 19 language should be revised in order to achieve the necessary clarity for the GMT and SSC to understand their role in the COP 19 process.

The following provides draft revision of COP 19. Draft revisions are in red font and in bold. The proposed changes are limited to pages 6 and 7 of this document.



# Pacific Fishery Management Council

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## COUNCIL OPERATING PROCEDURES

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As Amended through November, 2021

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## COUNCIL OPERATING PROCEDURE

### Protocol for Consideration of Exempted Fishing Permits for Groundfish Fisheries

Approved by Council: 09/10/03

Revised: 03/11/05; 09/14/07; **06/10/11**

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#### DEFINITION

An exempted fishing permit (EFP) is a federal permit, issued by the National Marine Fisheries Service, which authorizes a vessel 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. 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 a proposed exempted fishery may vary. The Pacific Fishery Management Council's (Council) fishery management plan (FMP) for West Coast groundfish stocks provides for EFPs to promote increased utilization of underutilized species, realize the expansion potential of the domestic groundfish fishery, and increase the harvest efficiency of the fishery consistent with the Magnuson-Stevens Act and the management goals of the FMP. However, EFPs are commonly used to explore ways to reduce effort on depressed stocks, encourage innovation and efficiency in the fisheries, provide access to constrained stocks while directly measuring the bycatch associated with those fishing strategies, and to evaluate current and proposed management measures.

#### GENERAL PROCESS

The Council process for considering and recommending groundfish EFP proposals is a biennial one that is synchronized with the decision-making process for considering new biennial groundfish harvest specifications and management measures. Approved EFP activities may continue for one or both years of the biennial management cycle. The Council's EFP process begins at the November meeting in odd-numbered years when alternatives for biennial harvest specifications and management measures are decided for detailed analysis. The Council also decides preliminary preferred yield set-asides for overfished and non-overfished species at this November meeting, including the yields necessary to conduct EFPs. Therefore, EFP applications for the following two-year management cycle are first considered at this November meeting. Any EFP proposals recommended for further consideration are given final consideration at the June meeting in even-numbered years, when final harvest specifications and management measures are decided. The Council may task the Scientific and Statistical Committee (SSC) or other advisors to do a more thorough review of refined EFP proposals that are recommended in November, prior to the June Council meeting, when EFPs are given final consideration. Those EFPs recommended at the June

Council meeting are forwarded to NMFS for implementation in the next biennial management cycle.

## PROTOCOL

### A, Submission

1. The Pacific Fishery Management Council and its advisory bodies [Groundfish Management Team (GMT), Groundfish Advisory Subpanel (GAP), and SSC] should review EFP proposals prior to issuance; the advisory bodies may provide comments 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 the earlier of the briefing book deadline or two weeks prior to the November Council meeting in odd-numbered years.
3. Applications for EFPs from federal or state agencies must meet the briefing book deadline for the November Council meeting in odd-numbered years.

### 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.
  - c. The exempted activity would be expected to provide information useful to management and use of groundfish 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). Note that EFPs are considered every other year for the following two-year management cycle. However, the EFP can be developed to cover only one year of the two-year cycle.
- 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 estimates of overfished 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.
- 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.
- n. The GMT, GAP, SSC, and/or Council may request additional information necessary for their consideration.

### C. Review and Approval

1. The GMT, GAP, and SSC will review EFP proposals in November of odd-numbered years 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 June Council meeting in even-numbered years. Only those EFP applications that were considered in November may be considered the following June; EFP applications received after the November Council meeting for the following two-year management cycle 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. 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 higher trip limits or other incentives to increase utilization of underutilized species while reducing bycatch of non-target species.
4. The GMT 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 Groundfish FMP?
  - c. Does the EFP account for fishery mortalities, by species?
  - d. Are the harvest estimates of overfished species within the amounts set aside for EFP activities?
  - 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. If the EFP proposes to integrate the data into management, what is the appropriate process?
  - j. What is the funding source for at-sea monitoring?
  - k. Has there been coordination with appropriate state and federal enforcement, management, and science staff?
  - l. Additionally, for EFPs that are requesting renewal, the GMT will consider the following:**

**Has, in the opinion of the GMT, the EFP potentially provided sufficient information to initiate development of an associated management measure?**

**1. If so, the GMT should:**

- a. Work with the applicants to obtain relevant EFP information (i.e., data, background information, etc.).**
- b. Draft a report for the Council which should include, but not be limited to:**
  - i. Analysis of the EFP results in relation goals and objectives of the EFP.**
  - ii. Analysis of the central risk tradeoffs the Council should consider.**
  - iii. Provide GMT recommendations, if applicable.**

**2. If not, the GMT should:**

- a. Discuss their concerns regarding the EFP with the applicants and consider the following points, and others as applicable and/or necessary:**
  - i. Is data collection under the EFP progressing in such a manner that it is expected that the EFP will ultimately collect sufficient data ?**
  - ii. Are there modifications to the EFP that might assure a successful outcome?**
- b. Report to the Council regarding their findings, as appropriate.**

**5. SSC Review:**

- a. All EFP applications should first be evaluated by the GMT for consistency with the goals and objectives of the groundfish FMP and the Council's strategic plan for groundfish.
- b. When a proposal is submitted to the GMT that includes a significant scientific component that would benefit from SSC review **or the GMT has developed an assessment of the potential readiness of the EFP data for use (as specified above under C.4.I),** the GMT can refer the application **and/or assessment** to the SSC groundfish subcommittee for comment. Those EFPs recommended at the November meeting that are also recommended for an SSC review, can be reviewed at the March, April, and/or June SSC meetings during even-numbered years prior to a final Council decision on the EFP in June of even-numbered years.
- c. In such instances, the groundfish subcommittee will evaluate the scientific merits of the application and will specifically evaluate the application's: a) problem statement, b) data collection methodology, c) proposed analytical and statistical treatment of the data, and d) the generality of the inferences that could be drawn from the study. The SSC groundfish subcommittee's evaluation shall be presented to the full SSC for review and comment.
- d. EFP proposals can be deferred to allow adequate time for SSC review.

#### 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; or within the last three years assessed a civil penalty related to violations of commercial fishing regulations in an amount greater than \$5,000; or, has been convicted of any violation involving the falsification of fish receiving tickets including, but not limited to, mis-reporting or under-reporting of groundfish. Documented fish receiving tickets indicating mis-reporting or under-reporting of groundfish will not qualify for consideration when fish reporting documents are used as part of the qualifying criteria for EFPs.

#### E. Report Contents

The EFP applicant must present a preliminary report on the results of the EFP and the data collected (including catch data) to the GMT and GAP at the November Council meeting of the odd-numbered year during the management cycle in which the EFP activity was conducted. The report should provide the EFP catch of species made to date and announce the sponsor's intent to continue the EFP activity in the second year of the management cycle (assuming the approved EFP activity was scheduled for a two-year duration). If the EFP was scheduled for two years and the EFP sponsors announce their intent to terminate the EFP early, the Council can recommend a release of EFP yield set-asides for other uses.

1. A final written report on the results of the EFP and the data collected must be presented to the GMT, GAP, SSC, and the Council at the September Council meeting of the year following the management cycle in which the EFP activity was conducted.
2. The final report should include:
  - a. A summary of the work completed.
  - b. A summary and analysis of the data collected.
  - c. Conclusions and/or recommendations, including general proposals for modification of management measures, as appropriate.
3. Timely presentation of results is required to determine whether future EFPs will be recommended.