Council Operating Procedure 20: Protocol for Consideration of Exempted Fishing Permits for Highly Migratory Species Fisheries (Revised)

Approved by Council:
11/02/05 Revised: 8/6/14,
4/11/17, 9/24/25, **6/15/25**

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. 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. 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.

NMFS AND COUNCIL ROLES

NMFS has the authority to issue or deny EFPs and specifies the application, review, and issuance requirements and process through nationwide federal regulations (50 CFR 600.745). The regulations allow NMFS to share applications and related information with the Council and other federal and state agencies, consult with the Council, and take comments at a Council meeting. The Council conducts its own EFP review process as described below. The Council will review, comment, and make recommendations to NMFS on EFP applications, and may request changes and/or additional information.

PROTOCOL

A. Submission

1. The Council and its advisory bodies [HMS Management Team (HMSMT), HMS Advisory Subpanel (HMSAS), and when appropriate, the Scientific and Statistical

Committee (SSC) and/or Enforcement Consultants] should review EFP applications 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 applications.

2. Applications for EFPs may be submitted to NMFS at any time (per NMFS regulations at 50 CFR 600.745) but will only be initially considered at the November and/or March Council meetings. A completed application should be received from NMFS by the Council in time for inclusion in the November or March advanced briefing book, the deadline for which Council staff will set in advance. The Council may endorse applications and forward their recommendation to NMFS or request additional review and consideration. Applications which the Council determines need additional information, review or public input, may receive further consideration at a subsequent Council meeting, either the March meeting, the following November meeting, or another meeting with HMS agenda items at the Council's discretion. Submitted applications should contain the elements listed at 50 CFR 600.745 and should also contain the elements listed in Section B.

B. Application Contents

1. EFP applications should 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. In addition to the NMFS EFP requirements, EFP applicants are encouraged to provide the following information for Council consideration:
   a. A description of applicant's relevant experience and their ability to successfully conduct activities under the EFP, including existing gear, if any, and vessels that can conduct EFP activities;
   b. An expected total duration of the EFP (i.e., number of years proposed to conduct exempted fishing activities);
   c. A description of a proposed 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;
   d. A description of the proposed data collection and analysis methodology, if applicable;
   e. A description of how vessels will be chosen to participate in the EFP (e.g. level of experience with similar gear types), if applicable;

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

C. Review, Comment, and Recommendation

1. The Council will consider EFP applications received from NMFS at the November and/or March Council meetings. Applications must be received by the Council by the advanced briefing book deadline prior to the Council meeting at which the application will be considered. The HMSMT and HMSAS will review EFP applications and make recommendations to the Council for action. The Council may refer the application to the SSC and/or the Enforcement Consultants for review and comment. The Council may take final action to endorse an EFP application in a single meeting or may request the applicant to submit a revised application at a future meeting (either March, the following November or another meeting with HMS agenda items) after addressing Council concerns.
2. EFP applications should contain a mechanism for data collection, 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 applications should include a description of the proposed data collection and analysis methodology used to measure whether the EFP objectives will be met.

D. Other considerations

1. The Council may not endorse EFP applications under the following circumstances:
    a. If the applicant/participant (fisher/processor) has violated past EFP provisions; or has been charged or convicted of a federal or state crime related to commercial fishing regulations;
    b. Within the last three years assessed a civil penalty related to violations of federal or state commercial fishing regulations;
    c. Has been charged or convicted of any federal or state 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.
    d. If the applicant/participant has been charged or convicted of a crime of moral turpitude, or serious violations not related to fishing activities, that could cause the Council to consider denying their application.

E. Reporting

1. After each season of EFP fishing concludes, NMFS will report to the Council on the data collected from EFPs and/or EFP reports submitted by EFP holders.
    a. EFP holders are also encouraged to report to the Council on their experiences consistent with the guidance in the HMS Roadmap.