Proposed Revisions to Council Operating Procedure 20: Protocol for Consideration of Exempted Fishing Permits for Highly Migratory Species Fisheries (Strikethrough)

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

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 ~~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 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. ~~However,~~ 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. ~~Applicants should submit a completed application in writing that includes, but is not limited to, the following information:~~ 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;

   ~~a. Date of application;~~

   ~~b. Applicant's names, mailing addresses, and telephone numbers;~~

   ~~c. A statement of the purpose and goals of the exempted fishing 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 exempted fishing has broader significance than the applicant's individual goals;~~

   ~~f.~~ b. An expected total duration of the EFP (i.e., number of years proposed to conduct exempted fishing activities);

   ~~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 exempted fishing, as well as any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH;~~

~~i.~~ 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;

~~j.~~ d. A description of the proposed data collection and analysis methodology, if applicable;

~~k.~~ 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;

~~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(s);~~

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.
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 incentives to increase utilization of underutilized species~~

~~while reducing bycatch of non-target species and/or interactions with protected species.~~

4. ~~The HMSMT review will consider the following questions:~~

   a. ~~Is more information needed for Council consideration of the application?~~

   b. ~~Is the EFP application consistent with the goals and objectives of the West Coast HMS FMP?~~

   c. ~~Do the EFP data collection methods account for fishery mortalities, by species?~~

   d. ~~Can the harvest estimates of overfished species and/or protected species be accommodated?~~

   e. ~~Does the EFP meet one or more of the Council's priorities listed above?~~

   f. ~~Is the EFP application 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. ~~Is the data ready to be applied? If so, should it be used, or rejected? If not, when will sufficient data be collected to determine whether the data can be applied?~~

   j. ~~What are the benefits to the fisheries management process to continue an EFP that began the previous year?~~

   k. ~~If integrating data into management is proposed, what is the appropriate process?~~

   l. ~~What is the funding source for at-sea monitoring?~~

   m. ~~Has there been coordination with appropriate state and federal enforcement, management and science staff?~~

5. ~~SSC Review:~~

   a. ~~All EFP applications should first be evaluated by the HMSMT for consistency with the goals and objectives of the HMS FMP;~~

   b. ~~When an application is submitted to the HMSMT that includes a significant scientific component that would benefit from SSC review, the HMSMT 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.~~

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 ~~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 federal or state commercial fishing regulations ~~in an amount greater than $5,000~~;

~~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 ~~Contents~~

1. ~~The EFP applicant should present a preliminary report on the results of the EFP and the data collected (including catch data) to the HMSMT at the June Council meeting of the following year.~~
2. ~~At the June Council meeting,~~ 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.
3. ~~The final report should include:~~
   ~~a. A summary of the work completed;~~
   ~~b. An analysis of the data collected;~~
   ~~c. Conclusions and/or recommendations;~~
   ~~d. Timely presentation of results is required to determine whether future EFPs will be recommended.~~