



Policy/Process for Council Review of EFP Applications for Forage Amendment EC Species

EOP AP Meeting

May 15, 2023

2023 Implementation Plan

Develop a policy and/or process for reviewing EFP applications for new or expanding fisheries as it relates to the unmanaged forage amendment

2



AP Objectives

- Review:
 - Relevant outcomes from the Forage Amendment.
 - Lessons learned from recent thread herring EFP application.
 - Staff recommendations.
 - EOP Committee recommendations.
 - Pacific Council operating procedure for consideration of EFPs for ecosystem component species.
- Provide AP input on development of a draft policy/process.



Forage Amendment Goal

Prohibit the development of new and expansion of existing directed commercial fisheries for unmanaged forage species until the Council has had an adequate opportunity to assess the scientific information relating to any new or expanded directed fisheries and consider potential impacts to existing fisheries, fishing communities, and the marine ecosystem.

Forage Amendment Measures

- Designated more than 50 previously unmanaged species in Mid-Atlantic federal waters as ecosystem components (ECs).
- 1,700 lb possession limit – applies to all ECs combined.
- Requires EFP as first step towards considering allowing landings above 1,700 lb.
- Council should review EFP applications prior to GARFO.



Exempted Fishing Permits (EFPs)

- Regulations: [50 CFR 600.745](#)
- Exempt a vessel from certain specified regulations. All other regulations remain in effect.
- May be used for a variety of purposes (e.g., data collection, exploratory fishing, market research, product development).
- Issued by NMFS regional offices.
- Must comply with all applicable laws, including MSA, NEPA, and ESA.
 - If fishing activity under EFP is similar to existing managed fisheries, may require limited additional analysis. If notably different, may require noteworthy additional analysis.

EFPs, continued

- Regulations list required contents of EFP applications.
- NMFS may require additional information.
- Once all necessary information is available, Federal Register notice published with summary of proposal and 15-45 day public comment period.
- Councils notified of EFPs requesting exemptions from their FMP regulations. Can comment during public comment period.
- NMFS can attach terms and conditions to EFPs (e.g., harvest limits, observer requirements, data reporting).
- EFPs typically valid for one year, but can be renewed.

Thread Herring EFP Proposal

- Proposed 3,000 MT (6.6 mil lb) annual harvest of thread herring with purse seines in Mid-Atlantic federal waters.
- Goal: Demonstrate potential for a commercial fishery.
- Data on length, age, maturity, and bycatch would be collected.



Peter Meyer

Thread Herring EFP Proposal

■ **SSC review (Sept 2021):**

- No scientific basis for opposing the proposal.
- Beneficial to collect biological and fishery performance data prior to directed fishery.
- Encouraged additional bycatch sampling and data on body fat content.

■ **EOP Committee review (Oct 2021):**

- Concern about proposed 3,000 MT catch limit. Appears double recent Gulf of Mexico landings and nearly equivalent to peak Atlantic coast commercial landings in mid-1990s.
- Recommended collection of additional bycatch information.
- Recommended development of a Council policy/process to guide future EFP reviews for Forage Amendment species.

Thread Herring EFP Proposal

- Applicants revised and resubmitted application in December 2022.
- **GARFO response (Feb 2023):**
 - Purse seine gear not currently used in Mid-Atlantic federal waters.
 - May require a new ESA consultation (may catch sea turtles and possibly Atlantic sturgeon).
 - May require an environmental assessment under NEPA.
 - GARFO staff are currently unable to assist with additional analysis given other priorities.

Thread Herring EFP Proposal

■ Current status:

- Obtained SCMFIS funding to develop an environmental assessment
 - Assess potential impacts of the fishery on endangered sea turtles and sturgeon, as required by ESA and NEPA
 - Produce a comprehensive environmental assessment report satisfying both ESA and NEPA requirements, along with any relevant technical reports, data, and analyses, to be submitted to GARFO to aid in the completion of the BiOp.

Pacific Council COP 24

- Comprehensive Ecosystem Based Amendment 1 (CEBA 1)
 - Very similar in intent and outcome to MAFMC's Forage Amendment.
 - Served as a model for MAFMC.
- Council Operating Procedure (COP) 24
 - Outlines process for consideration of EFPs for ECs.
 - Requires Council, AP, and SSC review of EFPs prior to regional office.
 - Outlines Council priorities and questions to guide reviews.
 - Modeled off COPs for other Pacific Council FMPs.
- Standard practice for Pacific Council to review EFPs prior to NMFS review, not just for ECs.

Staff Recommendations

- Reference fed regulations for application contents.
- Expand upon fed requirements to also require descriptions of expected bycatch species, expected levels of bycatch, and expected impacts of bycatch.
- Applications should provide justification for specific catch levels.
 - May be appropriate to consider incremental increases above recent landings given limited data and lack of stock assessments.
- Applications should describe procedures for monitoring all catch, including incidental catch and discards.

Staff Recommendations

- Encourage collection of information to assist with future management and stock assessments (e.g., age, length, weight, sex, maturity).
- Applicants should determine if additional analysis is needed to comply with applicable laws.
- Council, Committee, AP, and/or SSC may request additional information.
- Applications should be submitted to Council one year prior to desired start of exempted fishing.

Comment Letter – 11 NGOs

- Support development of a policy/process.
- 2021 letter opposing thread herring EFP due to ecosystem concerns.
- Pacific Council COP 24 is a good model for the Mid-Atlantic Council.

EOP Committee Recommendations

- Use Pacific Council Operating Procedure 24 as a template.
- Add all staff recommendations.
- Add guidelines for SSC review terms of reference.
- Consider a decision tree approach to determine if each relevant EFP warrants full review or if fewer steps could suffice for some.

Pacific Council COP 24

■ Definition

- Defines EFPs and references federal regulations

■ Purpose

- Of the operating procedure, of EFPs

■ Protocol – Part A: Submission

- The Council and its advisory bodies (SSC and AP) review EFP proposals prior to issuance.
 - Advisory bodies may comment on methodology and relevance to science and management data needs; make recommendations to the Council.
- Deadlines for submission to Council.

Pacific Council COP 24

- Protocol – Part B: Proposal Contents
 - Justification for EFP
 - Potential impacts of exempted activity
 - Details on planned methodology
 - Consideration of broader significance than applicant's individual goals
 - Other information may be requested by Council and/or advisory bodies

Pacific Council COP 24

- Protocol – Part C: Review and Approval
 - Timing of review by AP and Council
 - Proposals must contain mechanisms (e.g., at sea monitoring) to ensure that harvest limits for target and incidental species are not exceeded and are accurately accounted for.

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■ Protocol – Part C: Review and Approval

3. The Council will give priority consideration to those EFP applications that:
 - a. Emphasize resource conservation and management with a focus on evaluating the effects of harvesting Shared EC Species on the larger California Current Ecosystem;
 - b. Can assess the potential effects of a directed fishery for one or more Shared EC Species on:
 - i. Any Council-managed species;
 - ii. Species that are the prey of any: Council-managed species, marine mammal species, seabird species, sea turtle species, or ESA-listed species;
 - iii. Habitat that is identified as essential fish habitat or otherwise protected within one of the Council's FMPs, critical habitat identified or protected under the Endangered Species Act, or habitat managed or protected by state or tribal fishery or habitat management programs;
 - iv. Species that are subject to state or tribal management within 0-3 miles offshore of Washington, Oregon, or California; or
 - v. Species that migrate beyond the U.S. EEZ.
 - c. Encourage full retention of fishery mortalities;
 - d. Involve data collection on fisheries stocks and/or habitat; and
 - e. Encourage innovative gear modifications and fishing strategies to reduce bycatch.

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- Protocol – Part C: Review and Approval
 - Review by AP and other advisory bodies:
 - Completeness of application
 - Consistency with goals and objectives of Council's Fishery Ecosystem Plan and FMPs
 - Relevance to Council priorities (previous slide)
 - Appropriateness of proposed methodology for monitoring catch, measuring success of EFP, etc.

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- Protocol – Part C: Review and Approval
 - Review by SSC:
 - Evaluate scientific merits and application's
 - Problem statement
 - Data collection methodology
 - Proposed analytical and statistical treatment of the data
 - Generality of inferences that could be drawn from the study
 - Methodology for determining potential ecological and economic impacts

Pacific Council COP 24

- Protocol – Part D: Other considerations
 - Past fishery management violations that could result in disapproval
 - EOP Committee agreed not to include in MAFMC version – already addressed by GARFO
- Protocol – Part E: Report contents
 - Details on contents of preliminary and final reports, deadlines for submitting
 - Will be reviewed by AP and other applicable advisory bodies

Decision Tree Approach

- GARFO concerns that a process like COP 24 adds complexity to the existing review process required under federal regulations.
- If proposed activity is simple, straightforward, and within the scope of existing managed fisheries, is review by the Council, SSC, and AP necessary?
- Committee support for Council review, as required by Forage Amendment.
- Could consider approach where Council first reviews applications, then considers if AP and/or SSC review is necessary.

SSC Terms of Reference (TORs)

- Provide guidance for SSC review to ensure all relevant applications are evaluated with the same criteria.
- Policy/process can include guidelines for TORs, but specific TORs will be tailored to each relevant EFP application.

Next Steps

June 8, 2023	<ul style="list-style-type: none">• Council meeting (Virginia Beach, VA)<ul style="list-style-type: none">• Update on EOP Committee and AP meetings during Committee reports
July – Aug 2023	<ul style="list-style-type: none">• Staff develops draft policy/process based on Council guidance
Sept 2023	<ul style="list-style-type: none">• EOP AP meeting to review draft policy/process and provide input to Committee and Council.• EOP Committee meeting to review draft policy/process, review AP input, and provide recommendations to the Council.
Oct 2023	<ul style="list-style-type: none">• Council meeting (October 3-5, NYC) to review draft policy/process, consider AP input and Committee recommendations, and consider adopting a policy/process.

Questions/Discussion

- AP suggestions for development of a draft policy/process.
 - Do you agree with the EOP Committee recommendations?
 - Do you recommend any other changes?

