

- American Sportfishing Association •Coastal Conservation Association
- Conservation Law Foundation •Great Egg Harbor Watershed Association
- Gotham Whale •International Game Fish Association •Menhaden Defenders
- National Audubon Society
- Rhode Island Saltwater Anglers Association •Riverkeeper, Inc.
- Theodore Roosevelt Conservation Partnership
- Virginia Saltwater Sportfishing Association •Wild Oceans

October 1, 2021

Kate Wilke, Chair
 Ecosystem and Ocean Planning Committee
 Mid-Atlantic Fishery Management Council
 800 North State Street, Suite 201
 Dover, DE 19901

Dear Ms. Wilke,

We write today to strongly oppose advancing for further consideration, the Atlantic Thread Herring Exempted Fishing Permit (EFP) application¹ (Application) that will be discussed by the Ecosystem and Ocean Planning Committee on October 4th.

The applicant is seeking an exemption from regulations implemented under the Unmanaged Forage Omnibus Amendment (UFOA) that the Council completed in 2017 after two years of hard work. Many of the undersigned groups were actively involved in the UFOA's development and commended the Mid-Atlantic Fishery Management Council for recognizing the ecological importance of forage fish to the region's diverse marine life and to valuable commercial and recreational fisheries.

As clearly stated in the Final Rule implementing the Unmanaged Forage Omnibus Amendment:

The objective of this action is to prevent the development of new, and the expansion of existing, commercial fisheries on certain forage species until the Council has adequate opportunity and information to *evaluate the potential impacts of forage fish harvest on existing fisheries, fishing communities, and the marine ecosystem* [emphasis added].²

The Application is inconsistent with this main objective.

The applicants are requesting an exemption from the key regulatory provision within the UFOA – 1,700 pound combined possession limit for unmanaged forage taxa designated as ecosystem component species – without addressing the objective behind it. Atlantic thread herring were included in the list of EC species because they, along with other clupeids, have been found in the stomachs of council-managed monkfish, bluefish, summer flounder, black sea bass and spiny

¹ https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/613654c59a810e50b5c10384/1630950597923/b_Lunds+Thread+Herring+EFP+Application+and+Project+Description.pdf

² 82 FR 4072, <https://www.federalregister.gov/d/2017-18034>.

dogfish³ as well as in the diets of protected whales, dolphins, porpoises and seals. Multiple seabird species (royal terns, laughing gulls, black skimmers, double-crested cormorants and osprey) incorporate thread herring into their diets across a large portion of the Atlantic Coast.⁴ Though the Application calls for trip limits up to 100,000 pounds (nearly a 60-fold increase from the current possession limit), it fails to include a research or data collection component that would evaluate impacts on predators and dependent fisheries, for example recreational fisheries for king mackerel and bluefish, major predators of thread herring,⁵ and impacts to the greater ecosystem that could result from entanglements of protected species and discarded bycatch.

A multi-year EFP is requested with an annual catch limit of 6.6 million pounds, an amount that exceeds the annual catch limit for chub mackerel,⁶ a data-poor forage species found to be in need of conservation and management through the UFOA that is now managed under the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan (FMP). In addition, the gear specified, 1-inch mesh purse seines of approximately 2,000 feet in length and 180 feet in depth, is untested in Mid-Atlantic federal waters, raising alarms about the potential for bycatch of feeding predators and other small pelagic fish, such as depleted river herring and shad that migrate in federal waters along the coast.⁷ No at-sea monitoring program is proposed that would provide for an objective observer trained in high-volume fisheries sampling to assess and evaluate bycatch.

The Mid-Atlantic Council was clear that it “does not intend to prohibit directed commercial fisheries for unmanaged forage species indefinitely.” EFPs were chosen as the method by which the Council will consider allowing new fisheries or the expansion of existing fisheries. Importantly, national regulations (50 CFR 600.745) regarding the approval or disapproval of an EFP require information to be provided about the effects on both the target and incidental species as well as an assessment of environmental impacts, including impacts on fisheries, marine mammals, threatened or endangered species, and essential fish habitat (EFH) which includes prey species and their habitat.^{8,9} Grounds for denying a permit include inconsistency with the management objectives of the FMP.¹⁰ The Regional Administrator must determine that the purpose, design, and administration of the exemption are consistent with the management objectives of the respective FMP, the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and other applicable law.¹¹

In addition to not meeting the objective of the Unmanaged Forage Omnibus Amendment, the Application is inconsistent with the Council’s Ecosystem Approach to Fisheries Management Guidance Document policy, “to support the maintenance of an adequate forage base in the Mid-Atlantic to ensure ecosystem productivity, structure and function and to support sustainable fishing communities,”¹² which is reflected in the 2020-2024 Strategic Plan Ecosystem Goal to

³ MAFMC. 2017. Unmanaged Forage Omnibus Amendment Including an Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Act Analysis, p. 52, http://www.mafmc.org/s/20170613_Final-Forage-EA_FONSI-Signed.pdf.

⁴ Lyons, Donald. Letter to Brandon Muffley. Thread Herring EFP Application, September 1, 2021, https://www.mafmc.org/s/S1_Email-from-Don-Lyons_Audobon_on-Thread-Herring-EFP.pdf.

⁵ Florida Fish and Wildlife Commission. “Florida’s Inshore and Nearshore Species: 2020 Status and Trends Report - Atlantic Thread Herring,” <https://myfwc.com/media/26255/status-trends-atlantic-herring.pdf>.

⁶ “NOAA Fisheries.” NOAA Fisheries Implements Atlantic Chub Mackerel Measures, <https://content.govdelivery.com/accounts/USNOAAFISHERIES/bulletins/298892e>.

⁷ “Atlantic States Marine Fisheries Commission.” species – Shad and River Herring, <http://www.asafc.org/species/shad-river-herring>.

⁸ 50 CFR § 600.745(b)(3)

⁹ 50 CFR § 600.910

¹⁰ 50 CFR § 600.745(d)(3)(ii)(F)

¹¹ 50 CFR § 648.12

¹² “Mid-Atlantic Fishery Management Council.” Ecosystem Approach to Fisheries Management, <https://www.mafmc.org/ea/fm>.

“support the maintenance of an adequate forage base to ensure ecosystem productivity, structure, and function.”¹³

Thus, we suggest that the EOP Committee consider this EFP application as an opportunity to initiate a set of guidelines for considering EFP applications for ecosystem component species under the UFOA. Protocol, such as that utilized by the Pacific Fishery Management Council under Council Operating Procedure 24 (COP-24),¹⁴ would ensure a consistent approach to meeting the Council’s ecosystem and FMP objectives, the EFP criteria described in national and regional regulations, and the requirements of the MSA.

Because of the deficiencies described above, we strongly oppose advancing the Atlantic Thread Herring EFP application for further consideration. At this time along our coastline, Atlantic herring and Atlantic mackerel are overfished and alewife, blueback herring and American shad are severely depleted. As fishermen seek opportunities to shift to new target species, our fishery management programs must take into account that the changing composition of the forage base is affecting predators as well as existing forage fisheries. A pathway to ecologically-sustainable new fisheries must include strategies to improve our understanding of ecosystem impacts, as the Mid-Atlantic Council rightly recognized when creating the Unmanaged Forage Omnibus Amendment.

Sincerely,

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Executive Director

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¹³ “Mid-Atlantic Fishery Management Council.” MAFMC Strategic Plan, <https://www.mafmc.org/strategic-plan>.

¹⁴ Pacific Fishery Management Council. “Council Operating Procedures as Amended through April 2021. Council Operating Procedure 24: Protocol for Consideration of Exempted Fishing Permits for Shared Ecosystem Component Species,” <https://www.pcouncil.org/documents/2020/09/current-operating-procedures.pdf/>.

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