



Mid-Atlantic Fishery Management Council

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P. Weston Townsend, Chairman | Michael P. Luisi, Vice Chairman

Christopher M. Moore, Ph.D., Executive Director

MEMORANDUM

Date: December 1, 2023
To: Chris Moore, Executive Director
From: Julia Beaty, Staff
Subject: Guidance Document for Council Review of Exempted Fishing Permit Applications for Unmanaged Forage Amendment Ecosystem Component Species

Background

In October 2023, the Mid-Atlantic Fishery Management Council (Council) discussed a draft policy and process document for Council review of Exempted Fishing Permit (EFP) applications for species listed as Ecosystem Components under the Unmanaged Forage Omnibus Amendment. They agreed to a few modifications to the document and planned to review and approve a revised document during their December 2023 meeting. Staff subsequently revised the document and sent it to the Ecosystem and Ocean Planning (EOP) Committee and Advisory Panel (AP) for review over email. The revised document is included behind this memo. Revisions are indicated with track changes.

Summary of EOP Committee and AP Input

Five Committee members and eight AP members indicated via email that they either supported the proposed revisions or were not opposed to them. One Committee member who supported the revisions provided additional edits for the section on EFP reports. These edits have been incorporated into the attached document with track changes. No other Committee or AP members expressed opposition to these additions.

One AP member expressed neither support nor opposition to the revisions but questioned why the revisions are needed if they do not change the substance of the document. Staff responded that some Council members were concerned about the potential for confusion related to the NOAA Fisheries Greater Atlantic Regional Fisheries Office (GARFO) authority for issuing EFPs and the Council’s role. The Council cannot require a specific process for EFP applications; they can only request that applicants comply with a Council review process that is outside of the typical GARFO process. Applicants can still submit their applications directly to GARFO and skip the extra steps desired by the Council. Some Council members thought re-framing the document as “guidance” would help better communicate that ultimately only GARFO has the authority for approving or disapproving these EFPs; however, the Council review process would help inform GARFO’s review and can set the stage for future Council considerations of management changes that may be requested, depending on the outcome of the EFP.

One AP member expressed opposition to the document generally, preferring instead that relevant EFP applications be sent to the Council as a courtesy after they have been submitted to GARFO.

This AP member recommended that the Council wait to review applications until after GARFO has published a Federal Register notice stating the application is complete and warrants further consideration. As has been the case with the recent threadfin herring EFP application, applications can sometimes require changes and lengthy reviews before GARFO determines they are complete and a public comment period is announced.

Two AP members who supported the revisions said the changes are consistent with the intent of the AP and Committee as discussed during other meetings earlier in the year. One AP member viewed the changes as clarifications requested by Council members who were not part of the previous AP and Committee discussions. This AP member reiterated previous discussions that while some may view the proposed EFP review process as burdensome, it is intended to save applicants from making significant investments in fishing activities that might be temporarily permitted by GARFO under an EFP, but may not be approved by the Council for the longer term.

One AP member who supported the revisions to the document noted that the proposed process is different than that adopted through the Unmanaged Forage Omnibus Amendment. Specifically, under the proposed process the Council and GARFO would work together to review relevant EFP applications concurrently, rather than the Council reviewing the applications prior to GARFO. This advisor questioned if the guidance document could change the process without a formal management action. Staff responded that the change can be made without a formal management action because the part of the amendment which would be revised is not included in the federal regulations. In addition, the change is not counter to the intent of the amendment because the Council would still review EFP applications before the GARFO review and approval process is fully complete.

Another AP member who supported the revisions recommended that GARFO issue guidance to EFP applicants to inform them of two possible paths for review: with or without Council review. This Advisor noted that GARFO has considerable power to assist in the Council review process by ensuring that relevant applications are forwarded to the Council. GARFO could indicate that the application is likely to be rejected without more information and review. This would be especially appropriate for exploratory fishing with the goal of considering a larger directed fishery in the future. This advisor thought smaller experimental studies from academic and similar research organizations should not require extensive Council review.

Staff Recommendation

Staff recommend that the Council approve the revised document during their December 2023 meeting.



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Guidance Document for Council Review of Exempted Fishing Permit Applications for Unmanaged Forage Amendment Ecosystem Component Species

Track changes indicate edits discussed at the October 2023 Council meeting or subsequently recommended by the Ecosystem and Ocean Planning Committee and Advisory Panel over email

Policy goal Purpose of this document

This document establishes a standard process for Council review of exempted fishing permit (EFP) applications for species listed as ecosystem components (EC) under the Council's [Unmanaged Forage Omnibus Amendment](#) (Forage Amendment). This document also communicates the Council's priorities regarding EC species to prospective EFP applicants. This document does not apply to EFP applications for other species managed by the Council.

As described in more detail below, EFPs authorize short-term exemptions from certain specified fishing regulations. Longer term fishing activities may require separate management actions such as development of a new Fishery Management Plan (FMP), an FMP amendment, or a framework adjustment. Use of an EFP does not guarantee the Council will develop a management action to allow longer term harvest of Forage Amendment EC species.

This document does not modify or replace the process described in the federal regulations for obtaining EFPs from the National Marine Fisheries Service (NMFS) regional offices. This document is not binding on NMFS and does not limit the agency's discretion to approve or disapprove any EFPs. The intent of this document is to outline the information needed by the Council to inform its review of EFP applications for Forage Amendment EC species. The Council will submit comments to NMFS on individual EFP applications. NMFS will consider those comments when making determinations regarding issuance of individual EFPs.

Exempted fishing permit definition

An EFP is a permit that exempts a vessel from certain specified federal fishing regulations. All other regulations remain in effect. EFPs may be used for purposes such as data collection, exploratory fishing, market research, product development, and other reasons. EFPs are issued by the NMFS regional offices. EFPs for Forage Amendment EC species are issued by the NMFS Greater Atlantic Regional Fisheries Office (GARFO).

As required by the federal regulations at [50 CFR 600.745\(b\)\(5\)](#), an EFP is valid for no longer than one year unless otherwise specified. However, EFPs may be renewed following the same procedures for obtaining an EFP. Multiple years of data collection are often preferable from a scientific perspective.

Forage Amendment requirements

The goal of the Forage Amendment was to 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. EFPs for Forage Amendment ECs must be consistent with the goal statement.

The Forage Amendment implemented a 1,700 pound possession limit in Mid-Atlantic Federal waters for over 50 forage species which were previously unmanaged in this region (Table 1). These species were designated as EC species in all the Council’s FMPs. The possession limit applies to combined landings of all the EC species.

As indicated in the goal statement above, the Council did not intend to indefinitely prohibit directed commercial fishing for the Forage Amendment EC species, but rather only 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. The Forage Amendment requires use of an EFP as a first step towards the Council considering allowing landings beyond the 1,700 pound possession limit. The federal regulations at [50 CFR 648.12](#) state that exemptions to the Forage Amendment requirements may be granted “for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC before approving any...exemptions for experimental fishing contributing to the development of new or expansion of existing fisheries for Mid-Atlantic forage species.”

Through the Forage Amendment, the Council also agreed that relevant EFP applications should be sent to the Council for review prior to submission to GARFO. Given the national-level regulations at [50 CFR 600.745](#) which apply to all EFPs, the Council cannot require applications to be sent to the Council first; however, they can request it.

This document reflects a change from the process adopted through the Forage Amendment in that the Council and GARFO will work together to review relevant EFP applications concurrently, rather than the Council reviewing the applications prior to GARFO. As described in more detail later in this document, the Council requests that GARFO refrain from publishing a Federal Register notice until certain steps of the Council review process are complete.

Table 1: Taxa designated as ecosystem components by the Council through the Unmanaged Forage Omnibus Amendment. The federal regulations at [50 CFR 648.2](#) (definition for “Mid-Atlantic forage species) further enumerate this list to the species level.

Anchovies (Family Engraulidae)
Argentines (Family Argentinidae)
Greeneyes (Family Chlorophthalmidae)
Halfbeaks (Family Hemiramphidae)
Herrings, sardines (Family Clupeidae)
Lanternfish (Family Myctophidae)
Pearlsides (Family Sternoptychidae)
Sand lances (Family Ammodytidae)
Silversides (Family Atherinopsidae)

Cusk-eels (Order Ophidiiformes)
Atlantic saury (*Scomberesox saurus*)
Pelagic mollusks except sharptail shortfin squid (*Illex oxygonius*)
Copepods, Krill, Amphipods & other species under 1 inch as adults

Required ~~e~~Contents of EFP applications for Forage Amendment EC species

EFP applications must contain all the elements listed in the federal regulations at [50 CFR 600.745\(b\)\(2\)](#), which apply to all EFPs and are summarized below. Additional ~~requirements established~~contents requested by the Council for Forage Amendment EC species are also listed below. ~~Requirements-Contents~~ specific to the Forage Amendment EC species are indicated with footnotes. All items below which do not have footnotes are required by the federal regulations for all EFPs.

1. The date of the application.
2. The applicant's name, mailing address, and telephone number. The applicant need not be the owner or operator of the vessel(s) for which the EFP is requested.
3. A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.
 - 3.1. The ultimate fishery management goals of the exempted fishing activity should be described. For example, applicants should indicate if their goal is to assess viability of a longer term directed fishery which would require a Council management action (e.g., an amendment or another type of management action to add a stock to an FMP).¹
4. 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.
5. For each vessel covered by the EFP, as soon as the information is available and before operations begin under the EFP:
 - 5.1. A copy of the U.S. Coast Guard documentation, state license, or registration of each vessel, or the information contained on the appropriate document.
 - 5.2. The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.
6. The species expected to be caught under the EFP, including the amount and expected disposition of those species (landed or discarded). This should include both targeted as well as incidental species, both managed and unmanaged.²

¹ The language for item 3.1 is specific to the Forage Amendment EC species. It is not included in the federal regulations for all EFPs.

² This differs from the federal regulations in that it expands the considerations beyond harvest of regulated species.

7. Expected impacts of all catch (i.e., landings and discards) of target and incidentally caught species on fisheries, fishing communities, essential fish habitat (EFH), marine mammals, threatened and endangered species, and the marine ecosystem.³
8. Justification for the specific catch levels requested.
 - 8.1. Given limited available data and current lack of stock assessments for the Forage Amendment EC species, applicants should consider incremental increases above recent landings to mitigate concerns about potential impacts of large increases in landings. Summaries of recent landings are available at <https://www.mafmc.org/unmanaged-landings-reports>.⁴
9. Procedures for monitoring all catch, including incidental catch and discards. Applicants may wish to consider mechanisms for observer coverage. Applicants should be aware that there are currently no existing mechanisms for third party funding of observers trained through the Northeast Fisheries Observer Program (NEFOP) or for assigning NEFOP observers to trips outside of what is required by the Standardized Bycatch Reporting Methodology.⁴
10. Applicants are encouraged to collect information that can assist with future management and stock assessments of EC species, including, but not limited to information on length, weight, age, sex, and maturity. Applicants should provide details for any planned biological sampling programs.⁴
11. Applicants are encouraged to consider gear modifications and fishing strategies to reduce bycatch.⁵
- ~~11.~~12. If the application requests renewal of a previously issued EFP, reports summarizing the outcome of the prior exempted fishing activity should be provided with the application. See pages 8-9 of this document for reporting requirements.⁴
- ~~12.~~13. A brief description of the qualifications of the applicant and project partners.⁴
- ~~13.~~14. The signature of the applicant.
- ~~14.~~15. Other information as necessary to ensure compliance with all applicable laws, regulations, and executive orders.
- ~~15.~~16. Other information if requested by the Council or GARFO.

EFPs must comply with all applicable laws, regulations, and executive orders, including, but not limited to, the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA). Depending on the

³ This expands upon the requirements in the federal regulations to include consideration of discards, fishing communities, and the marine ecosystem.

⁴ This language is specific to the Forage Amendment EC species. It is not included in the federal regulations for all EFPs.

⁵ This language is based on the Pacific Fishery Management Council's Operating Procedure 24. It is not included in the federal regulations for all EFPs.

characteristics of the proposed fishing activity, this may require additional analysis. This could include development of a NEPA document such as an environmental assessment, an EFH consultation, and/or an ESA consultation (which would involve developing a biological opinion and an incidental take statement). In general, EFP applications for fishing activities that are similar to existing managed federal waters fisheries (e.g., the same gear types, seasons, and areas fished) will require less additional analysis than fishing activities that differ from existing managed federal waters fisheries. Applicants should consult with the Council and GARFO to determine what additional analyses may be required. Applicants should be aware that these additional analyses can be time consuming. GARFO and Council staff can provide only limited support for these analyses given workload constraints.

EFP-p Process for Council review of EFP applications for Forage Amendment EC species

EFP applications for Forage Amendment EC species should be sent to the Council for review prior to or at the same time as submission to GARFO. Applications should be sent via email to the Council executive director.

Applications should be submitted to the Council at least one year prior to the desired start of exempted fishing activities. This is intended to allow sufficient time for review by the Council, the Council's Scientific and Statistical Committee (SSC), Ecosystem and Ocean Planning (EOP) Committee, and EOP Advisory Panel (AP), as appropriate, as well as subsequent revisions to the application if needed, and review and processing by GARFO. This differs from the 60 day timeframe indicated in the federal regulations for all EFPs as the Council requires additional levels of review for EFPs for Forage Amendment EC species. Applicants should be aware that this review may take longer than one year, depending on the details of the specific fishing activities proposed and depending on other Council and GARFO priorities and workload constraints.

Council staff will work with GARFO staff to review EFP applications to determine if all the contents listed in the prior section are included. If the application is complete, Council leadership will decide if it should be reviewed by the SSC. It is expected that most applications will be reviewed by the SSC. Council leadership will approve terms of reference for the SSC to address. Terms of reference will be tailored to each EFP application but are expected to focus on the adequacy of the proposed sampling methodology to 1) allow for a determination of if the stated purposes and goals of the EFP have been met, 2) accurately estimate landings and discards of all caught species, and 3) provide information that may be useful to future stock assessments and management. The SSC may also comment on the EFP's consistency with the goal of the Forage Amendment, including the ability of the proposed methodology to allow conclusions to be made regarding potential impacts of the exempted fishing activity on existing fisheries, fishing communities, and the marine ecosystem. If the SSC, Council staff, or GARFO identify major flaws with the proposed methodology or other aspects of the application, applicants may be directed by the Council or GARFO to revise the application prior to further review.

Complete applications will be reviewed by the EOP Committee and EOP AP during either separate or joint meetings of the two bodies. With the assistance of Council staff, the EOP Committee and EOP AP will consider the following questions:

1. Is the application complete?

2. Are the proposed catch levels sufficiently justified?
3. Is the proposed data collection methodology sufficient to accurately estimate landings and discards by species for all target and incidental species?
4. Will the information collected allow for a determination of whether the stated purposes and goals of the EFP have been met?
5. Will the information collected support an assessment of the impacts of all catch on existing fisheries, fishing communities, marine mammals, threatened and endangered species, EFH, and the marine ecosystem?
6. Can the information collected assist with future management and stock assessments of EC species or other species?
7. Have the applicants determined if any additional analysis is needed to comply with applicable laws (e.g., MSA, ESA, NEPA)?
8. If the application requests renewal of a previously issued EFP, has the extension for an additional year been justified, including consideration of information provided in reports on the outcome of the previously issued EFP?
9. Is the proposal consistent with the goal of the Forage Amendment and the goals and objectives of the Council's FMPs?
10. Do the applicants and associated project partners have a history of relevant work to suggest they can successfully complete the proposed project?

After applications have been reviewed by the SSC, the EOP Committee, and the EOP AP, the full Council will then review the relevant feedback and consider the application. The Council will determine if they wish to provide additional feedback to the applicants and/or provide comments during the Federal Register comment period described below. The Council may provide comments on all the items listed above for SSC, EOP Committee, and EOP AP review, including the consistency of the proposal with the goal of the Forage Amendment.

Council leadership may decide that review by the SSC, EOP Committee, EOP AP, and/or full Council may take place via email for applications that are not expected to be controversial. For example, email review may be sufficient if the application only requests an extension of a previously issued EFP. In addition, the Council may determine they are opposed to the EFP and do not need further review to inform their position, for example, if the EFP is deemed incompatible with the goal of the Forage Amendment.

Unless requested by Council leadership, applications that are revised after review by the SSC, EOP Committee, EOP AP, Council, or GARFO do not require additional review by any Council groups to confirm the adequacy of the revisions.

Overview of process for GARFO issuance of EFPs

As described in the federal regulations at [50 CFR 600.745](#), if the GARFO Regional Administrator determines that the application is complete and warrants further consideration, a Federal Register notice will be published to briefly describe the proposed exempted fishing activity and announce a 15 to 45 day public comment period.

For EFP applications for Forage Amendment EC species only, the Council requests that GARFO refrain from publishing the Federal Register notice until after the steps described in the previous section for SSC, EOP Committee, and EOP AP review are complete. This will help ensure the Council can develop informed comments during the public comment period without further delaying review of the application.

The remainder of this section is based on the federal regulations at [50 CFR 600.745](#).

If the GARFO Regional Administrator determines that the application does not warrant further consideration, both the applicant and the Council will be notified in writing of the reason for the decision.

As soon as practicable after the close of the public comment period, the GARFO Regional Administrator shall make a determination on issuance of the EFP.

GARFO may attach terms and conditions to the EFP, consistent with the purpose of the exempted fishing and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

1. The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.
2. The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.
3. A citation of the regulations from which the vessel is exempted.
4. The time(s) and place(s) where exempted fishing may be conducted.
5. The type, size, and amount of gear that may be used by each vessel operated under the EFP.
6. Whether observers, a vessel monitoring system, or other electronic equipment must be carried on board vessels operating under the EFP, and any necessary conditions, such as pre-deployment notification requirements.
7. Data reporting requirements necessary to document the activities, including catches and incidental catches, and to determine compliance with the terms and conditions of the EFP and established time frames and formats for submission of the data to NMFS.
8. Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMPs and other applicable law.

9. Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

EFP applications may be denied for a number of reasons, including, but not limited to, concerns about detrimental impacts to managed species, protected species, or EFH according to the best scientific information available; economic allocation as the sole purpose of the EFP; inconsistency of the EFP with FMP objectives and applicable laws; failure to provide an adequate justification for the exemption; and enforcement concerns. If an EFP application is denied, the applicant will be notified in writing of the reasons for the denial.

GARFO may charge a fee to recover the administrative expenses of issuing an EFP.

As described in the federal regulations at [50 CFR 600.745\(b\)\(4\)-\(9\)](#), upon receipt of an EFP, the permit holder must date and sign the permit, and retain the permit on board the vessel(s). The permit is not valid until signed by the permit holder. In signing the permit, the permit holder agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations. The permit holder also acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization and revocation by GARFO. The EFP must be presented for inspection upon request of any authorized officer. Any fish, or parts thereof, retained pursuant to the EFP must be accompanied, during any ex-vessel activities, by a copy of the EFP.

Unless otherwise specified, an EFP is valid for no longer than one year. EFPs may be renewed following the same application procedures described above.

Reports on outcome of EFPs

As required by the federal regulations, reports on the outcome of the EFP must be submitted to ~~the Council and~~ GARFO no later than six months after concluding the fishing activity authorized by the EFP.⁶ These reports should also be sent to the Council.

~~At a minimum, these reports should summarize total landings and discards by species, conclusions relative to the stated goals of the EFP, and any conclusions regarding impacts on existing fisheries, fishing communities, marine mammals, threatened and endangered species, EFH, and the marine ecosystem. Reports should include the following information:~~

1. A description of all species caught while fishing under the authority of the EFP, including the amounts and dispositions of all species caught, landed, or discarded.
2. A description of the probable impacts of this fishing effort on fisheries, fishing communities, EFH, marine mammals, threatened and endangered species, and the marine ecosystem, based on the documented amounts of species caught, landed, or discarded.
3. A description of the gear used, and any specific fishing strategy employed to target the desired species, as well as any gear modifications and fishing strategies used to reduce

⁶~~The six month time frame is specified in the federal regulations at [50 CFR 600.745\(e\)](#).~~

bycatch or environmental impacts caused by fishing activities under the authority of the EFP.

4. Recommendations for revising the EFP to provide better information from the activities undertaken under the authority of the EFP or modifying fishing activities to improve catch, reduce bycatch, or otherwise improve fishing efficiency.
5. Conclusions regarding whether the fishing activities undertaken under the authority of the EFP provide the necessary information for determining the next steps in this process, based on the information collected.

The Council and GARFO may determine additional requirements for these reports and may also require interim progress reports. Any publications resulting from EFP activity should be shared with the Council and GARFO.

As noted above, these reports will be considered when renewal of the EFP is requested. Therefore, reports should be submitted as soon as possible to support Council and GARFO review of renewal applications.

Contact information

For questions about the Forage Amendment or the process for Council, EOP Committee, EOP AP, or SSC review of EFP applications, contact Julia Beaty, Fishery Management Specialist, at jbeaty@mafmc.org or 302-526-5250.

For questions regarding review and issuance of EFPs by GARFO, contact Ryan Silva, Cooperative Research Liaison, at ryan.silva@noaa.gov or 978-281-9326.