



Mid-Atlantic Fishery Management Council

800 North State Street, Suite 201, Dover, DE 19901

Phone: 302-674-2331 | FAX: 302-674-5399 | www.mafmc.org

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

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

DRAFT Policy and Process for Council Review of Exempted Fishing Permit Applications for Unmanaged Forage Amendment Ecosystem Component Species

September 13, 2023 Ecosystem and Ocean Planning Advisory Panel and Committee Meeting

Prepared By: Julia Beaty, Council Staff
September 2023

Policy goal

This document establishes a standard process for Council review of exempted fishing permit (EFP) applications for species listed as ecosystem component (EC) species 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.

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.

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 National Marine Fisheries Service (NMFS) regional offices. EFPs for Forage Amendment EC species are issued by the NMFS Greater Atlantic Regional Fisheries Office (GARFO).

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. Relevant EFP applications should be sent to the Council for review prior to review by GARFO.

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 (<i>Scorpaenopsis saurus</i>)
Pelagic mollusks except sharp-tail shortfin squid (<i>Illex oxygonius</i>)
Copepods, Krill, Amphipods & other species under 1 inch as adults

Required contents of EFP applications for Forage Amendment EC species

This section lists the required contents of EFP applications for Forage Amendment EC species. 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, as well as additional requirements established by the Council for Forage Amendment EC species. Requirements specific to the EC species are indicated with footnotes.

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.
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 to be 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 (landed or discarded) those species. This should include both targeted as well as incidental species, both managed and unmanaged.¹
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.²
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.³ Summaries of recent landings are available at <https://www.mafmc.org/unmanaged-landings-reports>.
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.³
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.³
11. Applicants are encouraged to consider gear modifications and fishing strategies to reduce bycatch.⁴
12. A brief description of the qualifications of the applicant and project partners.
13. The signature of the applicant.
14. Other information as necessary to ensure compliance with all applicable laws, regulations, and executive orders.

¹ This differs from the federal regulations in that it expands the considerations beyond just harvest of regulated species.

² This expands upon the requirements in the federal regulations to include consideration of discards, fishing communities, and the marine ecosystem.

³ This language is specific to the Forage Amendment EC species. It is not included in the federal regulations for all EFPs.

⁴ This language is borrowed from the Pacific Council's Operating Procedure 24. It is not included in the federal regulations for all EFPs.

15. 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 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 water 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 process for Forage Amendment EC species

Step 1: Submission of EFP application to the Council

EFP applications for Forage Amendment EC species should be sent to the Council for review prior to formal submission to GARFO. Applications should be sent via email to the Council executive director. Applications should not be formally submitted to GARFO prior to Council review; however, they may be sent to GARFO for preliminary review.

Applications should be submitted to the Council 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 Ecosystem and Ocean Planning (EOP) Committee, EOP Advisory Panel (AP), and/or Scientific and Statistical Committee (SSC) 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.

Step 2: Review by the EOP Committee, EOP AP, SSC, and Council

Council staff will first review EFP applications to determine if all the required elements listed in the previous section have been addressed. Complete applications will be reviewed by the EOP Committee and EOP AP during either separate or joint meetings of the two bodies.

The EOP Committee and EOP AP will consider the following questions when reviewing EFP applications for Forage Amendment EC species:

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 if 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?
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?

The Council will decide if the EFP application should be reviewed by the SSC. If the Council desires SSC review, Council leadership will approve terms of reference for the SSC to address. Terms of reference will be tailored to each EFP 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 the potential impacts of the exempted fishing activity on existing fisheries, fishing communities, the marine ecosystem. SSC review may occur before or after review by the EOP Committee and EOP AP.

After EFP applications have been reviewed by the EOP Committee, EOP AP, and/or SSC, 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 EFP applicants and/or provide comments during the Federal Register comment period described in the next section.

The Council may decide that review by the EOP Committee, EOP AP, SSC, and/or Council may take place via email for EFP 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 EOP Committee, EOP AP, SSC, or Council do not require additional review by those groups to confirm the adequacy of the revisions.

Step 3: GARFO review of EFP application

After the Council has completed its review of the EFP application, including review by the EOP Committee, EOP AP, and/or SSC, as appropriate, applicants may submit their complete EFP application to GARFO. The GARFO process for consideration of EFP applications is summarized below. Additional details are provided 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. If the 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.

The Council may submit comments during the comment period. If the Council intends to take comments during a Council meeting, this should be indicated in the meeting notice and agenda. The EFP applicant will be notified and given the opportunity to speak to the EFP application during the meeting.

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.

Step 4: Use of the EFP

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.

Step 5: Reports

EFP applicants must submit a report on the outcome of the EFP to the Council and GARFO no later than six months after concluding the fishing activity authorized by the EFP. 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. 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.

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.