



Mid-Atlantic Fishery Management Council

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Ecosystem and Ocean Planning Advisory Panel Meeting

Policy/Process for Review of EFPs for Forage Amendment EC Species

May 15, 2023
Meeting Summary

Meeting Objective

The Mid-Atlantic Fishery Management Council's (Council's) Ecosystem and Ocean Planning (EOP) Advisory Panel (AP) met via webinar to discuss development of a policy/process for Council review of exempted fishing permit (EFP) applications for species listed as ecosystem components (EC) under the Unmanaged Forage Omnibus Amendment (Forage Amendment).

EOP AP members in attendance: Fred Akers, Eleanor Bochenek, Bonnie Brady, Jeff Deem, Zachary Greenberg, Jeremy Hancher, Peter Himchak, Fiona Hogan, Jeff Kaelin, Meghan Lapp, Carl LoBue, Pam Lyons Gromen, Philip Simon, George Topping, Judith Weis

Others in attendance: Katie Almeida, Julia Beaty, Rujia Bi, Alan Bianchi, Greg DiDomenico, James Fletcher, Zach Schuller, Anna Weinstein, Kate Wilke

Four advisors, including two who were unable to attend the meeting, provided comments in writing. These comments are appended to this meeting summary. Instances where these comments support other statements made during the meeting are indicated in the summary below.

Please note: Advisor comments summarized below are not consensus or majority statements.

Summary of AP Discussion

Key Points

- Five advisors expressed support for using the Pacific Council's COP 24 as a template for the Mid-Atlantic Council to help ensure consideration of ecosystem impacts.
- One advisor expressed support for developing a Mid-Atlantic Council process but did not express an opinion on COP 24 as a template.
- Three advisors expressed opposition to using COP 24 as a template given its complexity.
- Six advisors expressed concerns that a complex process would serve as a barrier to obtaining EFPs, especially for small businesses.
- Three advisors emphasized the need for clear guidelines on the types of analysis needed to support issuance of EFPs.
- Three advisors said the Council should support opportunities for development of new sustainable fisheries.

Thread Herring EFP

Advisors discussed an ongoing thread herring EFP application and considered how it can inform the process for review of future EFP applications for EC species. This application proposes to use purse seine gear to target thread herring in federal waters. Two advisors clarified that purse seine gear has been used in federal waters for many years by vessels participating in the menhaden fishery and operating out of New Jersey and Virginia. These vessels sometimes fish in federal waters off New Jersey, Delaware, and Maryland. However, these vessels do not have federal permits and therefore are not covered by existing analyses for federally managed fisheries. Therefore, the National Marine Fisheries Service Greater Atlantic Regional Fisheries Office (GARFO) is requiring substantial additional analysis to support this EFP.

GARFO is especially interested in additional analysis of potential bycatch of sea turtles and Atlantic sturgeon. One advisor said over a five-year period of observer coverage in the Mid-Atlantic menhaden purse seine fishery (2007-2012) for meal and oil, there were 29 observed trips and only two sea turtles caught. Both turtles were released alive. They also noted that encounters with sturgeon are extremely rare as purse seines aren't designed to contact the bottom. It is likely that any encountered sturgeon could be released alive. Another advisor said it is easy to let sea turtles escape purse seines unharmed by lowering the cork line.

One advisor said there is limited observer coverage of the Mid-Atlantic menhaden purse seine fishery, and no coverage in many years, because it does not qualify for coverage under the Standardized Bycatch Reporting Methodology as the vessels do not have federal permits. In addition, this fishery is categorized as a category II fishery under the Marine Mammal Protection Act (MMPA),¹ which results in a lower allocation of MMPA funding for observer coverage than higher risk fisheries. For example, under current funding levels, gillnet trips are being prioritized over purse seine trips.

The EFP applicants are committed to evaluating the data that are available to analyze the potential impacts. One advisor said Lund's Fisheries' entire annual contribution to the Science Center for Marine Fisheries (SCMFIS) has been allocated to fund development of an environmental assessment for the exempted thread herring fishery application. This advisor said this funding could have been used to provide for observer coverage on the thread herring trips and support additional data collection on the resource, but instead will be used to cover the additional analysis required by GARFO.

Another advisor expressed concern that an analysis focused on sea turtles and sturgeon may not fully satisfy all the necessary environmental analysis requirements. This advisor said GARFO and the Council should more clearly define the go/no go criteria for this EFP, including the specific issues to be resolved and the specific data required.

One advisor noted that the same nets used in the menhaden fishery are not expected to efficiently harvest thread herring as thread herring do not bunch together as tightly as menhaden and are more likely to bolt when the net encircles them. For these reasons, larger purse seine nets will be built for this experimental thread herring fishery. This is part of the economic justification provided by the

¹ A category II fishery is expected to have occasional incidental mortality and serious injury of marine mammals (i.e., annual mortality and serious injury is greater than 1 percent and less than 50 percent of the potential biological removal level).

applicants for the requested 6.6 million pounds of annual harvest. It is not a high value species, but there are market opportunities for recreational bait and zoo and aquaria feed. There is a purse seine fishery for this species in Florida. Thread herring are also imported from a fishery in Mexico.

Unmanaged Forage Omnibus Amendment

The Forage Amendment requires EFP applications to be sent to the Council prior to formal submission to GARFO. One advisor said they did not support this approach and preferred that EFP applications be sent to both the Council and GARFO at the same time to allow for more efficiency. They also supported the standard EFP review process outlined in the federal regulations, where the Council reviews the applications and can provide comments after GARFO publishes a federal register notice indicating the application is complete. This is the process used by the New England Council.

This advisor also noted that the Forage Amendment allowed for the possibility of expanded directed fisheries; however, these potential fisheries were not analyzed in an environmental assessment. This has resulted in substantial additional analysis being required of EFP applicants.

Another advisor noted that the intent of the Forage Amendment was not just to guide the development of new fisheries, but also to consider the ecosystem impacts of harvesting forage species. Given that the goal of many EFPs will be to consider the potential for a longer term directed fishery, the Council should use the EFP process as an opportunity to specify what information will be needed to consider potential future management of new directed fisheries for forage species, including ecosystem impacts.

Pacific Council Operating Procedure 24 (COP 24)

As described in more detail in the [summary of the April 27, 2023 EOP Committee meeting](#), the EOP Committee recommended using the [Pacific Council's COP 24](#) as a template for a Mid-Atlantic Council policy/process, with some revisions. Five advisors expressed support for this recommendation (including three advisors who submitted written comments) and three advisors expressed opposition. Advisors speaking in favor of this process said it would help ensure consideration of ecosystem impacts. Advisors speaking in opposition said the process is unnecessarily complex and creates barriers to participation. These concerns are described in more detail in the next section as they were not always specific to COP 24.

One advisor said although the Pacific Council has received no EFP applications under COP 24, they receive multiple proposals a year for highly migratory species EFPs. Those EFPs fall under a different operating procedure which is extremely similar to COP 24. According to this advisor, this illustrates that the Pacific Council process provides effective guidance for applicants. They also noted that the priorities listed in COP 24 are modeled off the purpose and need of Pacific Council's Comprehensive Ecosystem Based Amendment 1. The Mid-Atlantic Council should look to the purpose and need of the Forage Amendment when drafting a similar section for their policy.

Barriers to Use of EFPs

Six advisors expressed concerns about creating a complex process that effectively serves as a barrier to obtaining EFPs. Three of these six advisors emphasized that if EFP applicants are required to complete a similar level of analysis as is being required of the thread herring EFP, then

small businesses and individual owner/operators will not be able to participate, which raises concerns about discrimination and fairness.

For example, it was noted that Lund's Fisheries first submitted the thread herring EFP application to the Council in April 2021. Two years later, significant work remains to be done to satisfy GARFO's analysis requirements. These specific requirements were not communicated until after Lund's submitted a revised application in December 2022. Lund's worked closely with scientists when developing their first draft of the EFP application and have committed \$52,000 to develop an environmental assessment this year. A few advisors praised Lund's for their commitment to the science but stressed that this level of funding is unreasonable to expect of smaller companies and individual owner/operators. If a similar process is required for future EFP applications, only large companies will be able to participate. One advisor said this would essentially create a "pay to play" situation and is against the spirit of the Forage Amendment. Another advisor expressed agreement and made comparisons to Marine Stewardship Council certification as another example of a process that is prohibitively expensive for small companies.

The group discussed that the goal of EFPs is often to carry out experimental fishing to determine if a larger, directed commercial fishery could be viable. One advisor emphasized that a lot of hard work goes into developing markets for new fisheries. If the process for developing a new fishery is too convoluted, drawn out, and expensive, it will be much harder to develop markets. Markets benefit from a predictable, steady supply of product.

Three advisors emphasized the need for clear guidelines on the types of analysis that would be sufficient to support future EFPs, including clear criteria for determining when the proposed fishing activity is different enough from existing managed fisheries that substantial additional analysis such as an environmental assessment is required, what specific types of analysis are required, and greater clarification on the process and the roles of the Council and GARFO.

Ecosystem Considerations

One advisor emphasized that the ecosystem impacts of harvesting forage species must be considered. Removing too many forage fish from the ecosystem could negatively impact predator species, including commercially and recreationally important species, as well as protected species like the critically endangered North Atlantic right whale.

Another advisor noted that when the Council's Scientific and Statistical Committee (SSC) reviewed the thread herring EFP, they did not express concerns about the ecosystem impacts of the proposed level of annual harvest. The SSC supported an experimental, monitored fishery, as proposed by the applicants, prior to development of a directed fishery. This advisor also noted that the thread herring stock is widely distributed throughout the South Atlantic and in the Gulf of Mexico, and it is becoming increasingly abundant in this region with warming water temperatures.

Another advisor said if the SSC reviews EFP applications and does not have concerns about the ecosystem impacts of the proposed activity, then the Council should not have those concerns either. This advisor also said the thread herring example shows that the burden of proof is too great to demonstrate that an experimental fishery will not impact the ecosystem. In this advisor's opinion, the proposed harvest levels are low enough that they will not have noteworthy ecosystem impacts; however, a very detailed and costly analysis is being required of the applicants. Another advisor said they agreed that the harvest levels proposed are unlikely to harm the environment.

EFPs as a Step Towards Directed Fisheries

One advisor discussed how the criteria for obtaining an EFP are not the same as the criteria for establishing a managed directed fishery. However, the goal of many of these EFPs will be to assess the viability of new directed fisheries. The thread herring EFP demonstrates that applicants may make significant financial investments and will therefore have a desire to pursue a longer-term directed fishery to justify that investment. The Council should communicate their criteria for considering managing directed fisheries to allow applicants to consider this when deciding whether to make significant investments in experimental fisheries.

Another advisor reminded the group that approval of an EFP does not guarantee approval of a longer term directed fishery. The data collected through the EFP will help determine if the types or amounts of bycatch would prevent the Council or GARFO from approving a directed fishery. This advisor saw no reason to prevent EFPs as long as approved data collection mechanisms are in place. The Forage Amendment EC species are data poor and EFPs can help collect needed data.

Three advisors said the Council should support opportunities for new sustainable fisheries, especially as new species become more available with climate change and the fisheries face other challenges such as regulations, changing species distributions, and offshore wind energy development.

One advisor expressed frustration that when fishermen work to start new fisheries, government regulations eventually destroy the market or put fishermen out of business. Fishermen are trying to adapt, but the government is preventing this adaptation with too many regulations.

One advisor said the Council should give priority consideration to EFP applications which respond to the regulations in [subsection 648.12 \(experimental fishing\)](#), which state “The Regional Administrator may exempt any person or vessel from the requirements of subpart... P (Mid-Atlantic forage species) of this part 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.”

Other Staff and EOP Committee Recommendations

One advisor expressed opposition to the staff recommendation for incremental increases in landings. Customers, for example bait shops, will only be interested in purchasing a species if they know a sufficient supply will be available. Low product availability may be undesirable to potential customers. This advisor said they would instead support a high cap on the level of catch allowed through EFPs.

One advisor said the staff recommendation to submit EFPs to the Council one year prior to the desired start of exempted fishing may not allow enough time to complete the lengthy review process that is proposed, as illustrated by the thread herring EFP application.

Another advisor said they support all staff and EOP Committee recommendations.

Other Comments

One advisor expressed general support for the Council developing a policy/process for reviewing EFP applications for EC species but did not provide specific recommendations for the details of that process.

One advisor asked what would happen if the Council or GARFO required electronic monitoring of the exempted fishing activity, but the Northeast Fisheries Science Center did not have the resources to process those data. This advisor noted that the New England Council's Industry Funded Monitoring Amendment demonstrated that monitoring requirements can become complicated.

One advisor noted that the thread herring EFP applicants are funding and writing their own environmental assessment. GARFO indicated the agency does not have resources to dedicate to this analysis. This advisor expressed concern with this concept because scientific analyses, especially those used to advise management decisions and actions, should be objective and unbiased. This advisor questioned how objectivity would be maintained when the party funding the research has a direct financial interest in the outcome of that work. The advisor asked if this is a typical process for EFPs. Staff indicated that GARFO still needs to review and approve the documentation to ensure compliance with applicable laws before issuing the necessary approvals to allow the exempted fishery to take place.

Public Comments

One individual cautioned against modeling a Mid-Atlantic Council process off a Pacific Council process due to many differences between the two regions. They also asked when the Council would focus on increasing commercial fisheries production, rather than limiting it. They noted that many concerns about bycatch could be addressed by allowing retention and sale of that bycatch and recommended allowing for total retention of all catch. They agreed with the advisor who spoke in opposition to the staff recommendation for incremental increases in landings and instead supported a high cap on allowable catch under EFPs.

Another individual asked the group to think about the socioeconomic benefits of allowing new fisheries. They said the commercial fishery stakeholders involved in the thread herring EFP application have followed all the regulations and have dedicated resources to improve the science. Using EFPs as a first step towards developing a new fishery is a way to increase flexibility and resilience and to support coastal communities, while still protecting forage species.

15 May 2023

Michelle Duval
EOP Chair
MAFMC

Dear Michelle,

Thank you for the opportunity to provide input on the Council's proposed process for addressing species covered by the Unmanaged Forage Amendment via an EFP. The Unmanaged Forage Amendment is an important action take by the MAFMC to maintain sustainable and healthy fish stocks in the Mid-Atlantic and I am pleased that I was able to be part of that process.

MAFMC staff and Council members have taken a prudent and sensible step in developing an EFP process beginning with the existing action taken by the Pacific Council. Over the year, staff and Council members of the MAFMC have learned from the other Councils around the nation, as our Council has aided the other 7. This action is a perfect example. The AP and Committee and then Council will be wise to start this process by using the Pacific Council's action as a template and example of how to accomplish this step. The Council needs to be involved in the EFP review process and at a sufficiently early stage to engage any resources necessary to complete the review.

During the development of the original Forage amendment, Council obtained the input and participation from a range of stakeholders who devoted significant time and energy to insuring that the Forage Amendment would best protect and sustain the stocks and populations on which so much depends. This next action acknowledges the important of the Forage AM, the species protected, the stakeholder input and the important role of the Council in all aspects of implementing the Forage AM.

I regret that I cannot attend the May 15, 2023 AP meeting due to a personal event schedule conflict and will follow-up with staff with any questions.

Yours truly,

A handwritten signature in black ink that reads "Peter L. deFur". The signature is written in a cursive style with a large, stylized initial "P".

Peter L. deFur

From: [Fred Akers](#)
To: [Beaty, Julia](#)
Subject: EOP AP EFP Comments
Date: Monday, May 15, 2023 6:06:11 PM

Hi Julia,

I support the Council's development of a policy for reviewing EFP applications for fish listed under the Unmanaged Forage Fish Amendment. I also support the staff recommendations and using a modified COP 24 as a template for the new MAFMC policy.

My main concern is the determination of the potential negative impact of the removal of forage species on the marine ecosystem and other managed species. I don't think it is unreasonable to put the burden of proof for the determination of the potential negative impacts on the applicants who are proposing the EFP to achieve a new fishery. If they do not have the resources or the expertise to prove no negative impacts, then they are not qualified to apply.

I think that there is also a risk that applicants for EFPs who invest very substantial sums of money for an EFP could bias the scientific outcomes by the economic harm to them from a negative determination. The term "pay to play" came up at the AP meeting today and that could be a potential problem from high capital investments in EFPs.

Perhaps the Council should include a "no guarantee" disclaimer in its EFP policy that a new fishery would automatically occur no matter what the scientific results of the EFP were.

I think that the Council should be cautious that the GARFO EFP approval process is robust enough to both thoroughly protect the marine ecosystem and enable industry profits. The story of river herring and shad is one example of many of a failure for both commerce and fishery protections.

Regarding the complaints about regulations, I would point to the new Blueline Tilefish fishery as a very positive example of how quickly the MAFMC can create a new fishery that does not involve protected forage fish. Perhaps an example of a new opportunity due to climate change in the ocean.

It seems that there is a continued trend to "fish down the food chain" as managed species are overfished, and I urge the Council to pay extra attention to continue to protect the Unmanaged Forage Fish.

Thank You for your work on these issues and the opportunity to provide feedback today.

Fred Akers, EOP AP Member.

From: [Phil Simon](#)
To: [Beaty, Julia](#)
Subject: Re: EOP AP meeting summary for your review by next Wednesday - May 24
Date: Thursday, May 18, 2023 10:52:32 AM

Hi Julia,

For clarification, I was concerned that Lund's Seafood proposed study, which appears to be focused on the sea turtles and sturgeon impacts, was too narrow to satisfy the environmental concerns surrounding the EFP that were expressed by GARFO. The Lund rep on the AP stated that the sea turtle/sturgeon question was the only concern that they needed to address. Reading the letter from Mike Pentony I have a different view. I think GARFO and the Council need to spell out exactly as possible the go/no go criteria for this proposed study, and exactly what other issues they need resolved, and with what kind of data. Otherwise it could end up as a go/no stop decision point. I also have to say that the \$50K price tag for the study is either really cheap for this kind of work, or the study is quite limited. I am doubtful that the data it produces would satisfy anyone looking for a clear answer. I'd rather see Lund invest the money in one new net, run the trial fishery at a lower catch rate, collect the data on bycatch as well as yield, and use that to allow (or not) the full EFP study to proceed.

Thanks,

Phil

From: [Firestone, Jeremy](#)
To: [Beaty, Julia](#)
Subject: Re: EOP AP meeting summary for your review by next Wednesday - May 24
Date: Thursday, May 18, 2023 11:38:28 AM

Hi Julia,

Thank you for the detailed summary of the meeting. It was very helpful to me, as earlier noted, I was unable to attend.

I also want to share my views.

1. As a general matter I support use of the Pacific Council's COP24 process, as it will help to ensure consideration of ecosystem impacts; it only seems prudent (precautionary approach) to consider them now, and would be consistent with the philosophy of NEPA that we make decisions with an understanding of the environmental effects.
 - a. It seems like a good place to start; if the process is found to not be optimal given, e.g., differences between the Pacific and mid-Atlantic fisheries, changes can be made going forward.
2. While high standards should be employed, I am supportive of giving these applications priority as far as staff resources to review given the potential benefits of new fisheries. At the same time, reviews should not be rushed by artificial deadlines (the one-year prior submission).
3. It is not atypical for applicants to fund research to satisfy ESA, or NEPA for that matter. I am sympathetic to the concerns that it may be cost prohibitive for smaller operators. Thus, would be beneficial if there were government resources to fund these activities. I appreciate that is however difficult in a situation like the commercial fish industry finds itself in given that it does not generally provide rents/royalties, etc. to the government for catch of fish, which are a common public resource.

Thank you, Jeremy

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