



Mid-Atlantic Fishery Management Council

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Ecosystem and Ocean Planning Committee Meeting

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

April 27, 2023
Meeting Summary

Meeting Objective

The Mid-Atlantic Fishery Management Council's (Council's) Ecosystem and Ocean Planning (EOP) Committee met via webinar to discuss development of a Council policy/process for review of exempted fishing permit (EFP) applications for species designated as ecosystem components (ECs) under the Council's Unmanaged Forage Omnibus Amendment (Forage Amendment). The objectives of this meeting were for the Committee to review relevant outcomes from the Forage Amendment, lessons learned from a recent thread herring EFP application, the Pacific Council's process for reviewing EFP applications for their ECs, and staff recommendations for next steps. The Committee was also tasked with providing guidance to staff on development of a draft policy/process.

For the second half of the day, the Committee met jointly with the EOP Advisory Panel (AP) to discuss the ongoing review of the Council's Ecosystem Approach to Fisheries Management risk assessment. This part of the meeting will be summarized in a separate document.

EOP Committee members in attendance: Michelle Duval (Committee Chair), Sara Winslow (Committee Vice Chair), Bob Beal, Emily Keiley, Kris Kuhn, Scott Lenox, Adam Nowalsky, Tom Schlichter, David Stormer

Others in attendance: Fred Akers,* Carly Bari, Julia Beaty, Carl LoBue,* Kiley Dancy, Greg DiDomenico, Maria Fenton, James Fletcher, Fiona Hogan, Meghan Lapp,* Brandon Muffley, Michael Luisi, Pam Lyons Gromen,* Phil Simon,* Ryan Silva, Anna Weinstein, Kate Wilke

*EOP Advisory Panel member

Summary of Committee Discussion

Summary of Committee Recommendations

As described in more detail below, the Committee recommended use of the Pacific Council's Operating Procedure 24 (COP 24) as a template for a Mid-Atlantic Council policy and process, with some revisions. They supported addition of all staff recommendations outlined in the [briefing materials](#), as well as guidelines for terms of reference (TORs) for Scientific and Statistical Committee (SSC) review. They also agreed to consider a decision tree approach where the Council would determine if each relevant EFP application warrants a full review by the SSC, Committee, AP, and Council, or if fewer review steps could suffice for certain EFP applications.

Discussion of Current Process

The Committee discussed the current process for issuance of EFPs. Greater Atlantic Regional Fisheries Office (GARFO) staff noted that threshold levels can be established for catch of target species and bycatch. This is evaluated through the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) process before the agency decides whether to approve an EFP application.

GARFO staff explained that although EFPs are issued for one year at a time, they are often renewed so they can be used over multiple years. The renewal process requires repeating the same steps as for issuing the EFP, including evaluating the expected impacts under NEPA and the ESA and soliciting public comments before making a determination on renewal.

GARFO staff also reminded the Committee that the national level regulations at [50 CFR 600.745](#) define the process for EFP application submission, review, and decision making. Due to these regulations, the Council cannot require that applicants submit EFP applications to the Council prior to formal submission to GARFO. The regulations outline the steps GARFO must take after receiving an application; therefore, if an application is formally submitted to GARFO prior to the Council, GARFO may not be able to delay initiating their review to wait for Council review.

Pacific Council Process and Use of COP 24 as a Template

The Committee agreed that the [Pacific Council's COP 24](#), which outlines the process for Pacific Council review of EFP applications for their EC species, is a good template for a Mid-Atlantic Council policy/process, but some revisions are needed. The Committee supported addition of all staff recommendations which are outlined in the [briefing materials](#) and not repeated here.

The Committee noted that many sections of COP 24 are redundant with the federal regulations at [50 CFR 600.745](#). However, they agreed that this redundancy could be helpful for EFP applicants by listing most of the relevant information in one place.

The Committee agreed that Section D of COP 24 (“Other Considerations”) is not necessary to include in a Mid-Atlantic Council document. This section specifies certain thresholds of past commercial fishing regulation violations which may result in denial of an EFP request. The Committee agreed that this is not necessary to include as GARFO already reviews all EFP applications for considerations related to past fishing regulation violations and they follow a specific policy for doing so. The Council’s policy could reference the existing GARFO policy and process for considering past violations. In addition, one Committee member noted that the Council does not have access to information needed to review past violations.

The GARFO representative on the Committee expressed concern that a process like COP 24 would add complexity to the EFP review process. It is helpful to have Council, SSC, and AP review of EFP applications for novel activities, outside the scope of existing managed fisheries. However, some EFP applications, even for EC species, may be much simpler and more straightforward. GARFO staff are concerned that in such cases, review by the Council, SSC, and AP may not add much value to the already robust GARFO review process required by the federal regulations.

Other Committee members reiterated that Council review of EFPs for ECs prior to formal submission to GARFO is part of the Forage Amendment and there is no intent to change that. This only applies to the Forage Amendment ECs. It does not apply to EFPs requesting exemptions from

other Mid-Atlantic Council regulations. Multiple Committee members agreed that a more detailed policy or process is needed to guide future Council reviews of EFP applications for ECs.

To address GARFO's concerns about complexity, some Committee members expressed a willingness to consider a decision tree approach where the EFP applications would first be reviewed by the Council. The Council would then determine if the application should proceed to review by the SSC, Committee, and AP or if further review is not warranted. Further review may not be warranted if the application is simple and straightforward or if the Council is opposed to the application and does not need further review to inform their position.

A Committee member asked if the Pacific Council has ever received an EFP application which they felt did not warrant the full review process outlined in their COPs. Staff said they would look into this and follow up with more information. It was noted that the Pacific Council has received no EFP applications for their EC species; however, they follow a very similar process for review of EFPs for all their managed species.

SSC Review of EFPs for ECs

The Committee agreed that development of TORs for SSC review of EFP applications may be beneficial to ensure that all relevant EFP applications are evaluated against a similar set of criteria. For example, these criteria could task the SSC with considering the adequacy of the sampling program and whether the EFP can help address questions related to ecosystem considerations. Staff suggested that the Council policy/process could include guidelines for such TORs; however, specific TORs should be tailored to each relevant EFP application. The Committee agreed with this suggestion.

Public Comments

One member of the EOP AP said the COP 24 process seems overly complex. From their perspective, the process that was followed for review of the recent thread herring EFP application worked well and additional complexity may not be warranted. They also cautioned that COP 24 has not been tested as the Pacific Council has received no EFP applications for EC species.

Another EOP AP member supported use of COP 24 as a template with modifications. This advisor expressed concern about the decision tree approach described above as they would like the AP to review all EFP applications for ECs. They also requested more information from GARFO on their process for reviewing EFP applications, beyond what is listed in the regulations. For example, it is not clear if consideration of impacts to the ecosystem and food webs are part of the existing process.

Another individual expressed doubts about modeling a process off a document developed for the west coast, where they said over 30% of harvest is exported. They asked if anything is known about the total biomass of species like thread herring. They expressed concern that the thread herring EFP could ultimately lead to another situation like chub mackerel, where the Council took on management of a new fishery for a species that is, for the most part, only harvested by a few companies. This advisor did not think this was a good use of Council resources and efforts should instead be focused on other Council-managed species such as summer flounder, scup, and black sea bass, for example by considering how to increase their biomass and reduce their exposure to harmful chemicals.

Another individual asked if the Council intended to apply their new policy/process to the thread herring EFP or if it would only apply to future EFP applications. The Committee chair said it may be unfair to retroactively apply a policy that has yet to develop to the thread herring EFP given that there has already been significant communication between those applicants, the Council, the EOP Committee, the SSC, and GARFO.