



Mid-Atlantic Fishery Management Council

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

MEMORANDUM

Date: April 19, 2023
To: Chris Moore, Executive Director
From: Julia Beaty, Staff
Subject: Policy/Process for Council Review of Exempted Fishing Permit Applications for Forage Amendment Ecosystem Component Species

Background

In August 2016, the Mid-Atlantic Fishery Management Council (Council) took final action on the [Unmanaged Forage Omnibus Amendment](#) (Forage Amendment). This amendment implemented a 1,700 pound possession limit for over 50 forage species which were previously unmanaged in Mid-Atlantic Federal waters (Table 1). These species were designated as ecosystem component (EC) species in all the Council's Fishery Management Plans (FMPs). The possession limit applies to combined landings of all EC species. 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.

In taking final action on the Forage Amendment, the Council agreed that use of an exempted fishing permit (EFP) should be the first step towards considering allowing landings beyond the 1,700 pound possession limit. The Council also agreed that they should review these EFP applications prior to review by the NOAA Fisheries Greater Atlantic Regional Fisheries Office (GARFO). Given the national regulations at [50 CFR 600.745](#), the Council cannot require that EFP applications be sent to the Council prior to GARFO; however, they can recommend that applicants do so.

The Council considered the first EFP application for a Forage Amendment EC species in 2021 when they reviewed an EFP application for Atlantic thread herring (*Opisthonema oglinum*, also referred to as threadfin herring). As a result of this review, the Council agreed to develop a policy/process to guide their review of future EFP applications for EC species.

This document provides background information and staff recommendations for next steps to assist the Council's Ecosystem and Ocean Planning (EOP) Committee, EOP Advisory Panel, and the Council in developing a process for review of EFP applications for Forage Amendment EC species.

Table 1: Taxa designated as ecosystem components by the Council through the Unmanaged Forage Omnibus Amendment.¹ 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>Scomberesox saurus</i>)
Pelagic mollusks except sharptail shortfin squid (<i>Illex oxygonius</i>)
Copepods, Krill, Amphipods & other species under 1 inch as adults

Federal Regulations and Process for EFPs

The federal regulations regarding EFPs are found at [50 CFR 600.745](#). An EFP exempts a vessel from certain specified 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 NOAA Fisheries regional offices. The regulations at [50 CFR 600.745\(b\)\(2\)](#) list required contents of EFP applications. The Regional Administrator may also request additional information. EFPs must comply with all applicable laws, including the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). Therefore, depending on the characteristics of the proposed fishing activity, EFPs may require additional NEPA analysis and/or additional ESA consultations beyond the existing analysis for managed fisheries.

If the Regional Administrator determines that an EFP application warrants further consideration and contains all relevant information, a notification will be published in the Federal Register with a brief description of the proposal and there will be a 15 to 45 day public comment period. Councils are notified of applications which request exemptions from their FMPs regulations and the Councils may provide comments during the public comment period.

The regulations note that 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 essential fish habitat (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.

The Regional Administrator may attach terms and conditions to the EFP. This may include, but is not limited to, maximum harvest levels, observer requirements, and data reporting

¹ The Council also approved inclusion of bullet mackerel (*Auxis rochei*) and frigate mackerel (*Auxis thazard*) on the list of EC species; however, NOAA Fisheries disapproved inclusion of these two species, arguing that they should not be classified as forage species due to their size and their typical prey.

requirements. EFPs are typically valid for one year, but can be renewed. A report summarizing catches and any other required information must be submitted to the Regional Administrator no later than six months after concluding the fishing activity authorized by the EFP.

Thread Herring EFP

Summary of Proposal

In the spring of 2021, Lund's Fisheries, Inc.; H&L Axelsson, Inc.; and Axelsson Seiner, Inc. developed an EFP application for an experimental purse seine fishery for Atlantic thread herring.² They provided this application to the Council and GARFO for preliminary review, following the process adopted by the Council through the Forage Amendment, with the goal of considering any preliminary input and revising the application as needed before formal submission to GARFO.

The applicants requested the ability to catch up to 3,000 MT (6.6 million pounds) of thread herring in federal waters between May 1 and November 1, 2022. The goal was to demonstrate the potential for a commercial thread herring purse seine fishery in federal waters. The applicants aimed to carry out this experimental fishery over multiple years to justify investments in gear and to maximize biological data collection. Up to four purse seine and four carrier vessels would have operated under the EFP and would have landed their catch at the Lund's plant in Cape May, New Jersey. The vessels expected to participate are also permitted in New Jersey's limited access individual transferable quota (ITQ) menhaden fishery. Given that thread herring are found at deeper depths than menhaden, larger nets would need to be built to target thread herring (e.g., 2,000 feet long, 180 feet deep, 1-inch mesh compared to 900 maximum feet in length for the New Jersey menhaden fishery). Data on length, age, maturity, and bycatch would be collected.

SSC Review

The Council requested that the Scientific and Statistical Committee (SSC) review the thread herring EFP application and provide input on scientific and biological considerations, including the proposed data collection program. The SSC reviewed the application in September 2021³ and found no scientific basis for opposing the proposal. They agreed that collection of biological and fine-scale fishery performance information prior to the start of a directed fishery is valuable for future scientific management. They also noted that this data collection would be consistent with the proposed National Standard 1 guidelines for Data Limited stocks. They also agreed that careful consideration should be given to designing a basis for estimation of scientific uncertainty and future management of this resource. The SSC supported the proposal for portside monitoring of bycatch but expressed some concern about the anticipated low at-sea observer coverage. The SSC also encouraged monitoring of bycatch of birds and marine mammals. The SSC also suggested collecting data on body fat content to compare with trends seen in other forage species.

EOP Committee Review

The EOP Committee reviewed the thread herring EFP application and the SSC's feedback in October 2021.⁴ Some EOP Committee members expressed concern about the proposed 3,000 MT catch limit and questioned whether it was scientifically determined and if it could be lowered. It was noted this catch limit appears to be double the recent commercial thread herring

² The application is available at <https://www.mafmc.org/council-events/2021/ecosystem-and-ocean-planning-committee-meeting>.

³ Meeting materials are available at <https://www.mafmc.org/ssc-meetings/2021/september-7-8>.

⁴ Meeting materials are available at <https://www.mafmc.org/council-events/2021/ecosystem-and-ocean-planning-committee-meeting>.

landings in the Gulf of Mexico and nearly equivalent to the peak commercial landings in the mid-1990's along the Atlantic coast.

GARFO Response

After considering the input of the SSC and the EOP Committee, the applicants revised their application and resubmitted it to GARFO in December 2022. GARFO responded with several concerns.

GARFO noted that purse seine gear in Mid-Atlantic federal waters may catch sea turtles and possibly Atlantic sturgeon. Given that purse seine gear is not currently used in federal waters in the Mid-Atlantic, the proposed exempted fishing would not be covered under current ESA consultations for existing fisheries. As such, it would be necessary to undertake a new ESA consultation for this EFP, which would involve developing a biological opinion and an incidental take statement. This could ultimately require measures to mitigate take such as posting a lookout to watch for protected species prior to deploying gear, using human observers or electronic monitoring on 100% of trips, or other measures.

GARFO also noted that issuance of EFPs must comply with NEPA. When EFPs authorize activities that are very similar to existing fisheries, NEPA compliance is often achieved through a simple categorical exclusion document prepared by GARFO. However, exempted fishing activity that is notably different from existing fisheries can require a more detailed NEPA analysis, such as an environmental assessment.

GARFO staff are focused on other fishery management priorities; therefore, they are currently unable to assist with additional analyses to ensure compliance with NEPA and the ESA. The same is true for Council staff. The applicants are currently considering the possibility to develop the necessary documents with assistance from contractors.

Pacific Council COP 24

In March 2015, the Pacific Fishery Management Council (Pacific Council) took final action on Comprehensive Ecosystem Based Amendment 1, which designated a suite of forage species as ECs in all Pacific Council FMPs (referred to as shared EC species) and prohibited directed commercial fishing for those species. Directed commercial fishing is defined as landing more than 10 mt combined weight of all these species per trip or 30 mt combined weight in any calendar year ([50 CFR 660.5](#)). The goals of this amendment were very similar to and served as a model for the Mid-Atlantic Council's Forage Amendment.

In taking final action on Comprehensive Ecosystem Based Amendment 1, the Pacific Council also approved Council Operating Procedure (COP) 24, which outlines the process for consideration of EFPs for the shared EC species. The Mid-Atlantic Council adopted some similar provisions but decided against including a similar level of detail as spelled out in COP 24. Specifically, use of an EFP as a first step towards considering allowing increased harvest of EC species and Council review of EFP applications prior to review by GARFO were modeled off COP 24.

The full text of COP 24 is available at <https://www.pcouncil.org/navigating-the-council/council-operations/#statement-of-organization>. The Pacific Council also has operating procedures for review of EFPs for groundfish fisheries (COP 19), highly migratory species fisheries (COP 20), and coastal pelagic species (COP 23). It is standard practice for the Pacific Council to review EFP applications prior to submission to the NOAA Fisheries West Coast Regional Office. This

process was in place prior to the development of COP 24. COP 24 was modeled off the previously developed procedures for EFPs for the other Pacific Council managed species.

Most other Councils (including the Mid-Atlantic Council for EFPs which do not address Forage Amendment EC species), review EFP applications after they are submitted to the Regional Office. Recent examples of Mid-Atlantic Council comment letters on EFPs are available at <https://www.mafmc.org/correspondence>.

Staff Recommendations

The EOP Committee, EOP Advisory Panel, and the Council should discuss the desired elements of a Mid-Atlantic Council policy/process for reviewing EFP applications for Forage Amendment EC species.

Council staff recommend consideration of the following elements in such a policy/process:

- As adopted by the Council through the Forage Amendment, EFP applications for EC species should be sent to the Council for review prior to formal submission to GARFO. Applications may be sent to GARFO for preliminary review at the same time they are sent to the Council, but they should not be formally submitted to GARFO prior to Council review.
- Applications should contain all information required by the regulations at [50 CFR 600.745](#), which includes, but is not limited to:
 - A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.
 - The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.
 - 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.
- In addition to the information listed above, EFP applications for EC species should also describe:
 - The species expected to be caught incidentally, including the amount of and expected disposition of (landed or discarded) those species. This should include all species and should not be limited to regulated species.
 - Expected impacts from catch of incidental species including impacts on fisheries, marine mammals, threatened and endangered species, and EFH.
 - Justification for the specific catch levels requested.
 - Given limited available data and current lack of stock assessments for EC species, applicants may wish to consider incremental increases above

recent landings to mitigate concerns about potential impacts of large increases in landings.

- Procedures for monitoring all catch, including incidental catch and discards. Applicants may wish to consider mechanisms for observer coverage. Currently, there are 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. It may be possible to develop such a system on a case by case basis; however, this will require additional time and additional conversations with GARFO and the Northeast Fisheries Science Center.
- 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 on any planned biological sampling programs.
- Applicants should determine if additional analysis may be needed to comply with applicable laws (e.g., ESA and NEPA), especially if the exempted fishing activity is not considered part of an existing federal waters fishery in this region. GARFO and Council staff can provide only limited support for these additional analyses given workload constraints.
- The Council, SSC, EOP Committee, and EOP Advisory Panel will review EFP applications for EC species and may request additional information beyond that listed above.
- EFP applications should be submitted to the Council one year prior to the desired start of exempted fishing activities to ensure sufficient time for review by the Council and its advisory bodies, subsequent revisions to the application if needed, and review and processing by GARFO.

Next Steps

The following timeline is suggested by Council staff for development of a process for Council review of EFP applications for EC species. This timeline is subject to change.

April 27, 2023	<ul style="list-style-type: none"> ● Ecosystem and Ocean Planning (EOP) Committee meeting via webinar: <ul style="list-style-type: none"> ○ Review relevant outcomes from the Unmanaged Forage Omnibus Amendment. ○ Review lessons learned from recent thread herring EFP application. ○ Review the Pacific Fishery Management Council's operating procedure for consideration of EFPs for ecosystem component species. ○ Provide guidance to staff on development of a draft policy/process.
May 15, 2023	<ul style="list-style-type: none"> ● EOP AP meeting via webinar to provide input on development of a draft policy/process.
June 2023	<ul style="list-style-type: none"> ● Council meeting (June 6-8, Virginia Beach, VA) to review Committee discussions, review AP input, and provide guidance to staff.
July – August 2023	<ul style="list-style-type: none"> ● Staff develops draft policy/process based on Council guidance..

<p>September 2023</p>	<ul style="list-style-type: none"> • EOP AP meeting via webinar to review draft policy/process and provide input to Committee and Council. This may be combined with EOP AP meetings on other topics (e.g., risk assessment, essential fish habitat review). • EOP Committee meeting via webinar or in person to review draft policy/process, review AP input, and provide recommendations to the Council. This may be combined with EOP Committee meetings on other topics (e.g., risk assessment, essential fish habitat review).
<p>October 2023</p>	<ul style="list-style-type: none"> • Council meeting (October 3-5, New York City, NY) to review draft policy/process, consider AP input and Committee recommendations, and consider adopting a policy/process.