



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: September 21, 2021
To: Chris Moore, Executive Director
From: Julia Beaty, staff
Subject: Policy and Process for Council Review of Exempted Fishing Permit Applications for Forage Amendment Ecosystem Component Species

During their meeting on October 4, 2023, the Mid-Atlantic Fishery Management Council (Council) will consider adoption of a policy and process document for review of Exempted Fishing Permit (EFP) applications for species listed as Ecosystem Components under the Unmanaged Forage Omnibus Amendment. The Council will review the recommendations of the Ecosystem and Ocean Planning (EOP) Advisory Panel, EOP Committee, and Council staff before considering adoption of a policy and process.

Staff recommend adoption of the policy and process described in the first attachment behind this tab. This reflects the input of the EOP AP and Committee as well as an additional revision for concurrent review by the Council and the NOAA Fisheries Greater Atlantic Regional Fisheries Office (GARFO). Through the Forage Amendment, the Council stated that EFPs for Forage Amendment EC species should be reviewed by the Council prior to GARFO. However, after further consideration, including lessons learned from a recent thread herring EFP application, Council staff believe coordinated, concurrent Council and GARFO review would help the process be more efficient. This was discussed by the EOP AP and Committee and supported by some members.

The following documents are provided behind this tab:

- 1) Draft policy and process document recommended by staff
- 2) Summary of September 13, 2023 EOP AP and Committee meeting

The following document is provided as a supplementary briefing material:

- 3) Draft policy and process document incorporating edits recommended by EOP AP and Committee (note that item #1 incorporates these edits)



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

Staff recommendation for consideration during October 4, 2023 Council meeting, incorporating recommendations by the EOP AP and Committee

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).

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. They acknowledged that given the national-level regulations at [50 CFR 600.745](#) which apply to all EFPs, they 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 (<i>Scomberesox saurus</i>)
Pelagic mollusks except sharptail 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. All items below which do not have footnotes are required by the federal regulations for all EFPs.

All applications for EFPs for Forage Amendment EC species must contain:

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 also 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 to add a stock to an FMP or another type of management action).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 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.²
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.

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.

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

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
12. A brief description of the qualifications of the applicant and project partners.⁴
13. The signature of the applicant.
14. Other information as necessary to ensure compliance with all applicable laws, regulations, and executive orders.
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 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.

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

EFP process for Forage Amendment EC species

Step 1: Submission of EFP application to the Council and GARFO

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 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.

Step 2: Council and GARFO review

Council and GARFO staff will first review EFP applications to determine if all the required elements listed in the previous section have been addressed.

The Council will decide if the EFP application 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 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, 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 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 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?

After EFP 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.

The Council may decide that review by the SSC, EOP Committee, EOP AP, and/or 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.

Step 3: Federal Register notice and GARFO consideration for approval

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. 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 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.

Step 4: Use of the EFP

This section summarizes the existing federal requirements at [50 CFR 600.745\(b\)\(4\)-\(9\)](#) regarding use of EFPs.

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.⁶ 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.

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



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Ecosystem and Ocean Planning Advisory Panel and Committee Meeting

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

September 13, 2023

Meeting Summary

Meeting objective and background

The Mid-Atlantic Fishery Management Council's (Council's) Ecosystem and Ocean Planning (EOP) Advisory Panel (AP) and Committee met in Baltimore, Maryland, with some members joining remotely. The purpose of this meeting was to discuss a draft policy and 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). The AP and Committee reviewed a draft policy and process document developed by staff based on input provided by the AP and Committee during their meetings in the spring of 2023.¹ The AP and Committee discussed the draft and provided suggested edits to the Council. The Council will consider adopting a policy and process document during their meeting on October 4, 2023.

The EOP AP and Committee also discussed the Council's Ecosystem Approach to Fisheries Management Risk Assessment during this same meeting. Those discussions will be summarized in a separate document.

EOP AP members in attendance: Fred Akers, Eleanor Bochenek, Bonnie Brady, Jeff Deem, Peter deFur, Jeremy Firestone, Jeremy Hancher, Jeff Kaelin, Carl LoBue, Pam Lyons Gromen, Philip Simon

EOP Committee members in attendance: Michelle Duval (Chair), Tom Schlichter (Vice Chair), Joseph Grist, Jerome Hermsen, Adam Nowalsky, Robert Ruhle, Sara Winslow

Others in attendance: Carly Bari, Julia Beaty, Kiley Dancy, Greg DiDomenico, Maria Fenton, Emily Gilbert, Emily Keiley, Brandon Muffley, Ryan Silva, Anna Weinstein, Kate Wilke

Please note: Unless otherwise noted, advisor and Committee member comments summarized below are not consensus or majority statements.

Key Points

AP and Committee members recommended the following revisions to the draft document:

- Clarify that the Council cannot require EFP applications to be sent to the Council prior to GARFO; however, the Council can request this.

¹ Available at <https://www.mafmc.org/s/Draft-EC-EFP-application-review-policy-and-process-Sept2023.pdf>.

- More clearly indicate each section that summarizes existing federal regulations.
- Note that although EFPs are typically only issued for one-year at a time, they can be renewed, and multiple years of data collection is often preferred from a scientific perspective.
- Add a reference to the regulations at [section 648.12](#) and note that the regulations provide for development of new and expansion of existing fisheries for Forage Amendment EC species.
- Emphasize that review by the Council's Scientific and Statistical Committee (SSC) is expected for most EFP applications for Forage Amendment EC species.
- Consider SSC review as one of the first steps in the Council review process.
- Require applications to state their ultimate fishery management goals regarding the EFP (e.g., longer term management as a stock in an FMP or other management change).
- Note that Council comments during the Federal Register comment period can include comments on the consistency of the EFP proposal with the goals of the Forage Amendment.

Some AP and Committee members also recommended that the Council further clarify the next steps, after use of an EFP, for considering management of emerging or expanding fisheries. They did not think this should be encompassed in the policy and process document for review of EFP applications, but recommended that the Council discuss it in more detail in the future.

Summary of AP Discussion

Two advisors expressed concern with the one-year duration of EFPs, noting that one year of data typically represents just a snapshot of fishery and environmental conditions and is generally not sufficient to draw robust scientific conclusions. GARFO staff clarified that a one-year duration of EFPs is codified in the federal regulations which apply to all EFPs nation-wide; however, renewals are common. One advisor said the policy and process document should more clearly indicate that this is a GARFO requirement and multiple years of data collection is often preferred from a scientific perspective.

One AP member noted that the draft policy and process document does not describe the steps that would occur after use of the EFP if the applicants wished to pursue a stock in the fishery designation or other management change to allow longer term directed fishing. Council staff noted that some details of the next steps would depend on the type of management action needed (e.g., framework adjustment, amendment, or new Fishery Management Plan).

One AP member asked if the NOAA Fisheries Greater Atlantic Regional Fisheries Office (GARFO) has a required time period for completing their review of EFP applications. GARFO staff clarified that the 60 days referenced in the federal regulations is not a deadline for GARFO review. GARFO aims to complete their review in as timely a manner as possible; however, review of some EFPs requires much more than 60 days, especially for controversial EFPs.

One AP member asked if GARFO's review criteria for EFP applications for Forage Amendment species differ from the general review criteria for all EFPs. GARFO staff clarified that there are not different review criteria.

Two AP members recommended that the document more clearly indicate which sections summarize the existing federal regulations for all EFPs to better distinguish them from sections that are specific to the Forage Amendment EC species.

One AP member reminded the group that all EFPs must comply with all relevant Fishery Management Plans (FMPs). As such, the elements of the draft policy and process document which are specific to the Forage Amendment EC species simply clarify what is already required under the Council's FMPs. As such, these sections are not truly additions to the existing federal requirements but instead help communicate what is already required. This advisor added that the goal of the Forage Amendment and this EFP review process is to ensure that new fishing opportunities can be pursued sustainably and that impacts to the ecosystem are evaluated.

One AP member asked about the process for GARFO consultation with the Council if an EFP application is sent to GARFO prior to the Council. GARFO staff indicated that under the process described in the federal regulations, the Council is notified when a Federal Register notice is published announcing a public comment period on the EFP application. The regulations indicate that the comment period should be 15-45 days; however, GARFO can provide additional time for Council review when needed.

One AP member asked what would motivate someone to send their EFP application to the Council first when doing so cannot be required. Applicants could simply bypass the lengthy Council review process which includes multiple review meetings (EOP AP, EOP Committee, SSC, and Council) and send their applications directly to GARFO. Staff noted that if the ultimate goal of the applicant is for the Council to develop a follow-on action to allow longer term directed fishing effort, it wouldn't reflect well on the applicant if they did not follow the process laid out by the Council.

One advisor recommended that the draft policy and process document include the regulations in subsection 648.12, 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." This advisor said it is important to communicate that the regulations provide for the development of new and expansion of existing fisheries for Forage Amendment EC species. He also emphasized that allowing opportunities to harvest emerging species can help the fishing industry to be resilient in the face of climate shifts.

Another advisor said fishermen using a variety of gear types and vessel sizes should have access to emerging fishing opportunities for underutilized species resulting from climate change. The Council should support this access through use of permits such as EFPs which can be renewed for a year or two and can be used to collect scientific information. In addition, fisheries for underutilized species can help provide low-cost seafood to the public.

One advisor reminded the group that his company is pursuing an EFP for an experimental thread herring fishery, as discussed during previous EOP AP and Committee meetings. This is the first EFP application for a Forage Amendment EC species. The application was originally submitted in 2021 to both the Council and GARFO. This advisor said they sent the application to the Council as a courtesy, given that the Council cannot require applications to be sent to the Council prior to GARFO. The applicants are still in the process of completing additional analysis of potential impacts to sea turtles and sturgeon at the request of GARFO and are using \$50,000 of their own funds to support this analysis. Given the experience with this EFP, he said the one-year time frame for Council review indicated in the draft document may be overly optimistic.

The same advisor expressed concern that Council review of EFP applications prior to GARFO review will be a deterrent to prospective applicants. He preferred that the Council adopt a set of criteria for review that would occur during the Federal Register comment period, rather than prior to GARFO review. Another advisor disagreed and said unnecessary delays could result from the Council waiting for the comment period to begin their review of EFP applications. This advisor supported Council review prior to GARFO review but could also support simultaneous Council and GARFO review at a minimum.

Two advisors said Council review prior to GARFO review could be advantageous for applicants because a favorable Council review could help expedite the GARFO review. One advisor said this could also help reduce the likelihood of applicants investing significant resources in preparation for exempted fishing activities which the Council may not ultimately support. Alternatively, even if applicants are able to successfully use an EFP, the Council may be opposed to development of a management action to allow longer term directed fishing effort. It would be beneficial for applicants to have some indication of that prior to investing in an experimental fishing effort with an EFP.

One advisor noted that ultimately only GARFO has the authority to determine if use of an EFP is sufficiently justified and should be approved. This advisor expressed concern with the statement that EFPs may be denied if economic allocation is the sole purpose of the EFP as all EFPs will have the goal of considering development of new economic opportunities.

This same advisor said SSC review should not be optional and all EFP applications should be reviewed by the SSC as the first step in the Council review process. He said the SSC has the expertise to consider the impacts of the catch levels proposed through EFP applications. Another advisor suggested that instead of requiring SSC review for all applications, the policy and process document could instead note that SSC review is expected for most applications.

One advisor said all applications should state the ultimate fishery management goals of the applicants, for example longer term management as a stock in an FMP.

Another advisor expressed support for a policy and process that is as protective as possible to the ecosystem. This advisor also reminded the group that a goal of the Forage Amendment was to prevent development of significant new fisheries before management measures can be put in place.

One advisor recommended a closer look at the draft document to ensure that words like “shall,” “may,” “should,” and “must” are used appropriately. For example, requirements should be clearly indicated with words such as “must.”

One advisor noted that the draft policy and process document contains a list of questions which will be evaluated during review of applications; however, the document is not clear who will answer each question. Staff and a Committee member noted that some questions may be most appropriate for the SSC to answer, while Council and GARFO staff can provide guidance on other questions. Another Committee member also noted that some questions may not have definitive answers for all EFP applications. However, the ability of the proposed methodology to take steps towards answering those questions could be considered.

Summary of Committee Discussion

The Committee agreed to the following revisions to the draft policy and process document:

- Clarify in the document that the Council cannot require EFP applications to be sent to the Council prior to GARFO; however, the Council can request this.
- Add reference to the federal regulations at 648.12 and note that the regulations provide for new fishing opportunities for Forage Amendment EC species.
- Require that EFP applicants clearly state if their ultimate goal is for the Council to consider managing the fishery in an FMP or another longer-term management change.
- Emphasize that Council comments during the Federal Register comment period can include Council comments on the consistency of the EFP proposal with the goals of the Forage Amendment.

The Committee discussed the timing of Council review of EFP applications in the context of the Council's annual implementation planning process. The Council's Executive Committee discusses priorities for the upcoming year each October, with the Council finalizing an annual implementation plan in December. The multiple EFP application review meetings described in the draft policy and process document could require a noteworthy amount of staff time. Given this, one Committee member questioned if a specific time window for submission of EFP applications would be beneficial. For example, the Council could request submission of applications prior to the October Council meeting. This could allow the Council to consider how to fit review of the EFP application in with the other priorities for the year. Another Committee member agreed that these sorts of priority planning discussions are important. GARFO staff expressed concern that a fixed time window for submission to the Council could complicate the GARFO review process if applications are sent to GARFO outside of the Council's stated time frame.

One Committee member expressed concern that time on SSC meeting agendas for EFP application review could be especially limiting. Another Committee member said SSC review as the first step in the review process could provide efficiencies. For example, the EOP Committee and AP may not need to review applications if the SSC has serious concerns with the proposed methodologies. Applicants could then be given the opportunity to revise their applications before resubmitting.

One Committee member said it's important to understand that an unfavorable Council review would not prevent individuals from submitting applications to GARFO and would not prevent GARFO from proceeding with their review. However, a favorable Council review would still act in the applicant's favor during GARFO review, especially if their ultimate goal is a follow-on Council management action.

One Committee member noted that species distributions are changing. For example, Virginia is considering management of new fisheries that have grown in recent years. The Council policy and process for review of EFP applications for emerging fisheries can help ensure a timely management response to new fisheries, which should benefit prospective EFP applicants in the long run. It will help applicants know what to expect and can help ensure the review process does not drag on longer than necessary.

Another Committee member agreed and expressed support for a previous AP member comment about the benefits of clarifying the next steps for consideration of a follow-on management action. This Committee member did not think these next steps need to be included in the document, but it could be beneficial for the Council to think about this in the future. This also aligns with discussions that occurred through the [East Coast Climate Change Scenario Planning](#) process.

One Committee member expressed concern that asking applicants to state their ultimate management goals for the EFP may be putting the cart before the horse. Applicants will first need to consider the results of their exempted fishing activity before determining their desired next steps. Another Committee member said it would be helpful for the Council to understand the applicant's long-term goals, even if they may evolve over time. This can help avoid speculation on the part of the Council.

The GARFO member on the Committee said the agency would prefer simultaneous Council and GARFO review over Council review prior to GARFO review.

Public Comments

Multiple members of the public spoke in favor of moving forward with the draft policy and process. One individual said the draft document helps provide transparency regarding the Council review process and consistency with the Forage Amendment. In addition, a similar process used by the Pacific Council helps EFP applications for their Coastal Pelagic Species and other FMPs move forward efficiently.

A member of GARFO staff who is not on the Committee and therefore spoke as a member of the public stated that the goal of EFPs is not to subvert the Council process and allow a long term directed fishery that has not been approved by the Council. As previously stated, longer term fishing activities would require action by the Council.



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

Incorporating revisions recommended during the September 13, 2023 Ecosystem and Ocean Planning Advisory Panel and Committee Meeting

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).

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. They acknowledged that, given the national-level regulations at [50 CFR 600.745](#) which apply to all EFPs, they cannot require applications to be sent to the Council first; however, they can request it.

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>Scomberesox saurus</i>)
Pelagic mollusks except sharptail 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. All items below which do not have footnotes are required by the federal regulations for all EFPs.

All applications for EFPs for Forage Amendment EC species must contain:

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 also 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 to add a stock to an FMP or another type of management action).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 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.²
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.⁴ 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

¹ This language 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 just harvest of regulated species.

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.

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
12. A brief description of the qualifications of the applicant and project partners.⁴
13. The signature of the applicant.
14. Other information as necessary to ensure compliance with all applicable laws, regulations, and executive orders.
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 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 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

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

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.

The Council will decide if the EFP application 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 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, and the marine ecosystem. If the SSC or Council staff identify major flaws with the proposed methodology or other aspects of the application, applicants may be directed 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 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?

After EFP 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 EFP applicants and/or provide comments during the Federal Register comment period described in the next section. 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 goals of the Forage Amendment.

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. Everything in this section is based on 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

This section summarizes the existing federal requirements at [50 CFR 600.745\(b\)\(4\)-\(9\)](#) regarding use of EFPs.

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.⁶ 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.

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