

## **Exempted Fishing Permit (EFP) Regulations Proposed Rule Briefing Handout for CCC Meeting – January 9, 2008**

The EFP regulations were first codified in 1996. Since that time, there has been interest within NOAA Fisheries to revise and update the EFP regulations. In 2003-2004 efforts were undertaken in the NOAA Fisheries Regional Offices to streamline the EFP application and issuance processes, and a workgroup was established to revise the regulations. The proposed rule reflects the past efforts and updates the regulations with changes that have occurred over the last 10+ years.

Section 204 of the MSRA added a new Cooperative Research and Management Program section (Section 318) to the MSA. Section 318(d) of the revised MSA requires that the Secretary, through NOAA Fisheries, “promulgate regulations that create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits.”

The EFP proposed rule published in the Federal Register (72 FR 72657) on Friday, December 21, 2007 with a 90-day comment period, which ends on March 20, 2008.

### **Highlights**

§ 600.745(b)(1) – A vessel with an EFP is only exempt from those regulations specified in the permit.

§ 600.745(b)(2)(v) – The applicant must provide any anticipated impacts of the proposed activity on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH, as part of an EFP application. (This documents current practice.)

§ 600.745(b)(3)(v)(F) – Whether observers, a vessel monitoring system, or other electronic equipment must be carried on board vessels operated under the EFP, and any necessary conditions, such as predeployment notification requirements.

§ 600.745(b)(3)(v)(G) – Data reporting requirements necessary to document the activities and to determine compliance with the terms and conditions of the EFP and established time frames and formats for submission of the data to NOAA Fisheries.

§ 600.745(b)(4) – EFP holders must date and sign the permit, and return a copy to NOAA Fisheries, to acknowledge the terms and conditions of the permit.

§ 600.745(c)(2) – All catch and bycatch must be reported.

### **Federal Register Notices**

Council meeting notices are not a substitute for publishing Federal Register notices for EFP applications, but are instead supplemental to that process. If the Council intends to take comments on EFP applications at a Council meeting, it must include a statement to this effect in the Council meeting notice and meeting agenda. Multiple applications for EFPs may be published in the same Federal Register document and may be discussed under a single Council agenda item.

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### Section 318(f) - Exemption for research projects funded by quota set-asides

Current quota set-aside procedures in the Northeast have been streamlined and will be retained. To further expedite the review of EFP applications for these projects, such as those that participate in the Mid-Atlantic Research Set-aside program, they will be exempted from the requirement to publish a separate Federal Register notice for each EFP application.

### New Definitions

*Compensation fishing* – As described under section 402(e)(2)(B) of the MSA, it is fishing conducted for the purpose of recovering costs associated with resource surveys and scientific studies that support the management of a fishery, or to provide incentive for participation in such studies. It is authorized through an EFP if an exemption is required or through a Letter of Acknowledgement if no exemption is required.

*Conservation engineering* – As described under section 404(c)(2) of the MSA, it is an area of research that includes the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch, promote efficient harvest of target species, and minimize adverse effects on EFH. It is considered to be scientific research if it would otherwise meet the definition of a scientific research activity and is conducted by a scientific research vessel. Otherwise, it is considered to be fishing, and must be conducted under an EFP if the activity would otherwise be prohibited by regulation. The preamble of the proposed rule lists activities that would qualify as scientific research, and conservation engineering language was added to the definition of scientific research activity.

*Gear testing* – To differentiate gear testing from conservation engineering, gear testing is defined as an at-sea activity with its sole purpose being the testing of the functionality of fishing gear. During gear testing no fish may be retained. Regional fishery regulations may specify additional requirements that would apply to this activity, such as using designated gear testing areas, testing trawl nets with the codend open, or testing during closed seasons.

### Observers

NOAA Fisheries-sanctioned observers or biological technicians, as described in the proposed rule, conducting activities within NOAA Fisheries-approved observer protocols, are exempt from the requirement to obtain an EFP.