



**WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL**

Experimental Fishing Permit Process

**159th Council Meeting
March 17-21, 2014
Fiesta Resort and Spa, Garapan, Saipan
Hilton Resort and Spa, Tumon Bay, Guam**

I. Introduction

American Samoa longline fishery participants are currently experimenting with a new type of operation that involves longline and handline gear fished in association with drifting Fish Aggregation Devices (FADs) used in the tropical purse seine fishery. The Council has been notified that if the trials prove successful, fishery participants may apply for an Experimental Fishing Permit (EFP) to fish within the American Samoa Large Vessel Prohibited Area (LVPA) with a vessel(s) greater than 50 ft in length.

Under existing federal regulations applicable to the Western Pacific Region, there is section that pertains to EFPs, including the process to follow and information required in an application (see 50 CFR § 665.17). If an EFP application is submitted, and if NMFS Pacific Islands Region Office (PIRO) deems that application to be complete, the Council will consider the information provided in the application and make a recommendation to PIRO to approve or disapprove the EFP.

II. Process

As outlined in 50 CFR § 665.17, the submission, review, and approval of EFPs consists of the following process:

- 1) To be considered for an EFP, an application must be submitted to the NMFS PIRO Regional Administrator at least 60 days before the desired date of fishing under the EFP.
- 2) The application must contain, but not limited to, the following information:
 - (a) The date of the application.
 - (b) The applicant's name, mailing address, and telephone number.
 - (c) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP.
 - (d) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals.

- (e) For each vessel to be covered by the EFP:
 - (i) Vessel name.
 - (ii) Name, address, and telephone number of owner and operator.
 - (iii) USCG documentation, state license, or registration number.
 - (iv) Home port.
 - (v) Length of vessel.
 - (vi) Net tonnage.
 - (vii) Gross tonnage.
- (f) A description of the species (directed and incidental) to be harvested under the EFP and the amount of such harvest necessary to conduct the experiment.
- (g) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used.
- (h) The signature of the applicant.

3) NMFS review the application, and if it requires all the necessary information, NMFS will publish a notice of receipt of the application in the *Federal Register* with a brief description of the proposal and will give interested persons an opportunity to comment.

- (a) NMFS will also forward copies of the application to the Council, USCG, and the local government fishery management agency.

**** Prior providing notice that an application is complete, NMFS can request the applicant provide an environmental analysis or other information that will be used to satisfy NEPA¹, ESA, and other applicable law. It is likely that NMFS will ensure that the action to approve an EFP is consistent with other applicable law prior to notifying Council, local government, and public that application is complete. This has the potential to substantially lengthen the application process.****

4) At a Council meeting following receipt of a complete application, the Regional Administrator will consult with the Council and the Director of the affected state fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application, if the applicant desires.

(5) Within 5 working days after the consultation described above, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the EFP and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

- (a) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.
- (b) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way.

¹ Based on the information provided, NMFS will decide on the level of NEPA documentation required (e.g. Categorical Exclusion, Environmental Assessment, Environmental Impact Statement).

- (c) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.
- (d) Activities to be conducted under the EFP would be inconsistent with the intent the management objectives of the FEP.
- (e) The applicant has failed to demonstrate a valid justification for the permit.
- (f) The activity proposed under the EFP would create a significant enforcement problem.

(6) The decision to grant or deny an EFP is final and unappealable. If the permit is granted, NMFS will publish a notice in the *Federal Register* describing the experimental fishing to be conducted under the EFP. The Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

- (a) The maximum amount of each species that can be harvested and landed during the term of the EFP, including trip limits, where appropriate.
- (b) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP.
- (c) The times and places where experimental fishing may be conducted.
- (d) The type, size, and amount of gear which may be used by each vessel operated under the EFP.
- (e) The condition that observers be carried aboard vessels operating under an EFP.
- (f) Data reporting requirements.
- (g) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FEP.

(7) Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one (1) year from the date of issuance, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures described above.

III. Application

At the date of writing, the Council has yet to receive notification of a complete application for an EFP. If no application is provided, the Council will receive a presentation on the EFP regulatory process at its 159th meeting in anticipation that a complete application may be submitted for the June 2014 meeting.