

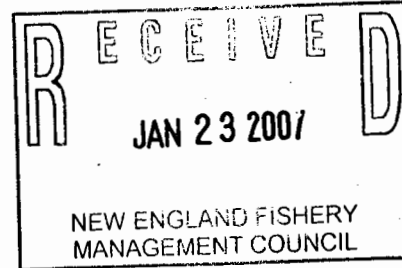


UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Northeast Fisheries Science Center
 166 Water Street
 Woods Hole, MA 02543-1026

#6

January 22, 2007

Capt. Paul J. Howard
 Executive Director
 New England Fishery Management Council
 50 Water Street
 Newburyport, Massachusetts 01950



Dear Capt. Howard:

Thank you for your letter of November 22, 2006, regarding your request for a review of "EFP Guidelines to determine if spawning periods are accurately characterized and summarize the evidence concerning the impacts of fishing on stocks during peak spawning periods." We apologize for the delay in replying to you, but have started on a response to your request.

We have identified a panel of NEFSC experts to discuss this topic in the next 2-3 weeks. The panel, to be chaired by Dr. Richard McBride, Chief of the Population Biology Branch, will review the table of "Peak spawning periods by species/closed area" for cod, haddock and yellowtail flounder; and suggest modifications as appropriate. The review will include a list of publications or unpublished data sources to support determinations. We will also summarize current literature on impacts of fishing on stocks during spawning activity, including a bibliography of relevant sources. We plan to provide this information to you before March 1, 2007.

If you would like more information or clarification of this scope of work, either now or after you receive our report, please let us know. There are several data sources that could be examined more closely, but any analysis of raw data would extend this request by several months. Either way, Dr. Mc Bride can be reached here in Woods Hole (office: 508-495-2244; fax: 508-495-2258; email: richard.mcbride@noaa.gov).

Sincerely,

Nancy B. Thompson, Ph.D.
 Science and Research Director



cc: PMF, CBK, TN (1/23)

GUIDELINES FOR INDIVIDUALS REQUESTING EXEMPTED FISHING PERMITS (EFPs)

Northeast Regional Office, National Marine Fisheries Service
June 1, 2005

Researchers seeking to conduct industry-based experimental projects relating to fisheries management often must request Exempted Fishing Permits (EFPs) from the Northeast Regional Office of the National Marine Fisheries Service (NOAA Fisheries Service). EFPs may be issued to authorize vessels doing research or research-related work (e.g., harvesting research set-aside quota that will be sold to generate revenue for research) to conduct activities that would otherwise be prohibited by Federal fishing regulations in 50 CFR part 648. Activities that frequently require an EFP include the testing of fishing gear, market research, and the public display of a fishery resource.

There are some types of regulatory exemptions that raise particular concerns because, if granted, they would allow fishing activities that could undermine measures established to reduce interactions with protected species or to conserve and manage fisheries. In such cases, there is a risk that the review of the EFP request may result in the denial of some or all of the exemptions needed to carry out the planned activities. There is also the risk that the scope of the exempted activity may have to be reduced. Researchers who request exemptions to modify fishing gear, increase the level of fishing activity, or alter the season or area in which a fishery takes place, could introduce new potential impacts to species protected under the Endangered Species Act (ESA) or Marine Mammal Protection Act. New impacts that would effect species protected under the ESA would require the conduct of a section 7 consultation.

These guidelines have been developed to provide researchers with advance information about exemption requests that may cause this type of concern. Researchers are urged to design their experimental activities to minimize the need for regulatory exemptions, and to limit the exemption requests to those that are directly related to, and necessary for, the success of the research project. The EFP review evaluates the impacts of the specific exemptions requested, including determining the scale and scope of the proposed activity. For instance, a request for exemptions to enable one cooperative research vessel to take a small number of experimental trips would be more likely to get approval than a request for many vessels to take many trips. The review focuses on the potential impact of the experimental activity, for instance, the amount of fish to be caught and the potential habitat impacts.

This document identifies the exemption requests that cause the most concern, in order to assist researchers in designing experimental programs that avoid these problem areas. With a few exceptions (see Section A below), exemption requests will continue to be evaluated on a case-by-case basis, and NOAA Fisheries Service may grant these types of exemptions if the specific project warrants. However, due to the concerns outlined below, such exemptions will be granted only if there is strong justification that the exemption is central to the research activity.

SECTION A. EXEMPTIONS THAT ARE NEVER GRANTED

Exemptions to allow the landing and sale of fish smaller than the minimum fish size

Requests to land **and** sell fish smaller than the minimum size will not be authorized because of the enforcement difficulties it would pose to have any undersized fish enter into commerce. EFP requests to possess and/or land undersized fish in order to carry out scientific study may be authorized, if the activity is a necessary aspect of the research.

Exemptions from vessel permit and reporting requirements

Requests to land and sell legal catch will not be authorized if the vessel has not been issued the required Federal fishing permits. This is necessary because of the enforcement difficulties it would pose to waive this basic requirement, and in order to ensure the integrity of the limited entry permit provisions. However, virtually any U.S. vessel may apply for and be issued an open access permit for many of the region's fisheries. Depending upon the research activity, such permits may be sufficient to allow the vessel to participate.

In addition, requests to exempt any commercial vessel from the mandatory reporting requirements will be denied because such reports are critical to the regional management programs.

Exemptions from commercial quotas or "hard TACs"

For species with hard quotas/TACs (measures that require the fishery to be closed when specified catch or landings levels are attained), exemptions that would cause such quotas to be exceeded cannot be authorized [§648.12(a)].

Exemptions that request an allocation of commercial quotas or "hard TACs"

Requests for exemptions that would grant the researcher a specific amount of commercial quota or hard TAC will not be approved because such a request represents an allocation of the resource. Allocation decisions are more appropriately made by the Regional Fishery Management Councils through their public process. Both the New England and the Mid-Atlantic Councils have established set-aside allocation to support research for some fisheries.

Exemptions to develop Special Access Programs (SAPs) that would occur in year-round closed areas during peak spawning periods

The Northeast (NE) Multispecies Fishery Management Plan (FMP) includes a provision that allows SAPs to be established. A SAP is a narrowly defined fishery that is designed to provide increased access to a stock(s) that, in the absence of such authorization, would not be allowed due to broadly applied regulations. Requests for EFPs for work within year-round closed areas during peak spawning periods for cod, haddock, and yellowtail flounder will not be authorized if the objective of the work is to collect information that would serve as the basis for proposing a SAP in those areas during those peak spawning periods. Authorizing SAPs during peak spawning periods would be inconsistent with the objectives of the year-round closures, which were established to protect cod, haddock, and yellowtail flounder stocks.

PEAK SPAWNING PERIODS BY SPECIES/CLOSED AREA

Source: Amendment 13 to the NE Multispecies FMP*

CLOSED AREA (CA)	COD	HADDOCK	YELLOWTAIL FLOUNDER
CAI	February-March*	March-April	n/a
CAII	February-March*	March-April	n/a
NANTUCKET LIGHTSHIP CA	n/a	n/a	April-June
WESTERN GULF OF MAINE	April	n/a	n/a
CASHES LEDGE	April	n/a	n/a

*Note that Framework 40-B to the NE Multispecies FMP has modified the peak spawning periods for cod.

Exemptions from year-round habitat closed areas and habitat areas of particular concern (HAPCs)

HAPCs areas are defined by the Councils in the development of their management programs to protect Essential Fish Habitat (EFH). There would be virtually no justification for an exemption to use bottom tending mobile gear within such areas, because it was such gear that these areas were intended to exclude. Other activity could be authorized if there is strong justification for conducting the work in the specific area, and if such activity would be expected to have minimal impacts on EFH.

SECTION B. EXEMPTIONS SUBJECT TO STRINGENT REVIEW

Exemptions from year-round closed areas

Applications for EFPs often request an exemption that would allow experimental activities to be conducted within year-round closed areas. When this exemption is requested, it is essential that the proposal clearly outline why the work must be carried out within the closed area rather than in the open area. Unless the proposal provides strong justification for conducting the work in a closed area, such an exemption is unlikely to be approved.

Even stronger justification must be presented if researchers are requesting to work within the year-round closed areas during peak spawning periods for cod, haddock, and yellowtail flounder. Such requests will be reviewed on a case-by-case basis, and scale/scope will be key aspects of the review. As noted in Section A, if the intent of the research is to propose a SAP in the closed area during peak spawning, the request would almost certainly be denied.

Exemptions from Days-at-Sea (DAS) for monkfish, scallops, NE multispecies

Researchers often request an exemption that would allow commercial fishing vessels to fish outside of the DAS management programs established for monkfish, scallops, and NE multispecies. The overall

DAS allocations made through these management programs are established to constrain fishing mortality to specified levels. In addition, the NE multispecies management program has established DAS for specific activities (Category A, Category B, Category C).

The fishing mortality associated with DAS exemptions must be evaluated to assure that such exemptions do not allow mortality to exceed the FMP's mortality goals. In addition, requests to utilize NE multispecies B or C category DAS would likely be denied. B DAS are intended to be used only in fisheries that have been determined to have only a minimal bycatch of any species of concern, and the allocation of B DAS accounts for the mortality based on that premise. C DAS are not authorized by the FMP for use at this time.

Exemptions from trip/possession limits

Requests for exemptions from trip or possession limits will be evaluated to determine whether the research activity would necessarily result in catch exceeding those levels. An exemption may be justified if catch levels in excess of the limits are directly related to the success of the research.

Exemptions from measures established to reduce interactions with protected species

Requests for exemptions from measures that were established to reduce interactions with protected species (e.g., gear prohibitions, area closures) require strong justification, and in some cases would require consultation under section 7 of the ESA, which could delay the issuance of an EFP.

Exemptions from minimum fish size

Requests to land (but not sell) fish smaller than minimum size may be granted for research projects if it is necessary in order to completely characterize the catch. All undersized fish must be returned to the sea, with the exception of fish landed as scientific samples in order to conduct further research onshore.