



Research Documentation

Exempted Fishing Permits, Temporary Possession Permits, Exempted Educational Activity Authorizations, and Letters of Acknowledgement

Introduction

NOAA’s National Marine Fisheries Service (NMFS) encourages industry involvement in fishery research. Cooperative research between fishery scientists, fishery managers, and the fishing industry fosters good science and promotes a positive and dynamic partnership. To ensure that such research activities are not contrary to management objectives and regulations, in addition to Federal mandates such as the Endangered Species Act (ESA) and other applicable laws, NMFS has established a process that authorizes or acknowledges research activities.

The following guidance is provided to assist researchers, particularly those involved in cooperative research, with understanding whether an Exempted Fishing Permit (EFP), Temporary Possession Permit, Exempted Educational Activity Authorization (EEAA), or Letter of Acknowledgement (LOA) is an appropriate document to obtain prior to beginning a project. Following a description of these different documents, a set of “Yes/No” questions is provided to assist the researcher in deciding which, if any, may be most appropriate. Specific directions for requesting each type of document are also provided. Lastly, guidance is provided on the type of exemptions that are never issued and exemptions that are only issued if there is very strong justification.

Please note that the final decision on whether an EFP, Temporary Possession Permit, EEAA, or LOA is most appropriate rests solely with the Regional Administrator, as does the final decision on whether to issue said document, particularly if said document would authorize exemptions from fishing regulations.

For additional information about research permits and LOAs, please contact Ryan Silva, Cooperative Research Liaison at (978)-281-9326, ryan.silva@noaa.gov, or the Sustainable Fisheries Division at (978) 281-9315.

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Research Document Summary

Exempted Fishing Permit

An EFP is a permit issued by the Northeast Regional Office (Regional Office) that authorizes a fishing vessel of the United States to conduct fishing activities that would be otherwise prohibited under the regulations at 50 CFR part 648 or part 697. Generally, EFPs are issued for activities in support of fisheries-related research, including seafood product development and/or market research, compensation fishing, and the collection of fish for public display. Anyone that intends to engage in an activity that does not meet the definition of scientific research but that would be otherwise prohibited under these regulations is required to obtain an EFP prior to commencing the activity. To determine whether an EFP is required, see the research document key. For information on how to apply for an EFP, refer to the EFP application section.

Temporary Possession Permit

Temporary Possession Permits authorize a federally permitted fishing vessel that is accompanied by an eligible research technician to temporarily retain fish that are not compliant with applicable fishing regulations for the purpose of collecting catch data. Example regulations include minimum fish sizes, species under quota closures, and fish possession limits. All non-compliant fish are returned to the sea as soon as practicable following data collection.

To be eligible for a Temporary Possession Permit, a vessel must have on board a trained fishery research technician that is an acknowledged representative of one of the following: Foreign government agency; U.S. Government agency; U.S. state or territorial agency; university (or other educational institution accredited by a recognized national or international accreditation body); international treaty organization; or scientific institution.

Exempted Educational Activity Authorization

An EEAA is a permit issued by the Regional Office to accredited educational institutions that authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited.

Letter of Acknowledgement

An LOA is a letter from the Regional Office that acknowledges certain activities as scientific research conducted from a scientific research vessel. Scientific research activities are activities that would meet the definition of fishing under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), but for the statutory exemption provided for scientific research. Such activities are exempt from any and all regulations promulgated under the Magnuson-Stevens Act, provided they continue to meet the definition of scientific research activities conducted from a scientific research vessel. Although the LOA is not required for scientific research, obtaining an LOA serves as a convenience to the researcher, the vessel(s), NMFS, the NOAA Office of Law Enforcement, and the U.S. Coast Guard, to establish that the activity is indeed exempt from the provisions of the Magnuson-Stevens Act. Obtaining an LOA may prevent work interruptions resulting from enforcement inquiries.

To meet the definition of a scientific research vessel, the vessel must be conducting a scientific research activity and be under the direction of one of the following: Foreign government agency; U.S. Government agency; U.S. state or territorial agency; university (or other educational

institution accredited by a recognized national or international accreditation body); international treaty organization; or scientific institution.

Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ. Research topics include taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch or other collateral effects of fishing, conservation engineering, and catch estimation of fish species considered to be a component of the fishery resources.

When reviewing an LOA application, the Regional Administrator or designee shall consider the following: The merits of the individual proposal and the institution(s) involved; whether the proposed activity meets the definition of scientific research activity; and whether the vessel meets all the requirements for a scientific research vessel.

An LOA is separate and distinct from any permit or consultation required under the Marine Mammal Protection Act, the ESA, or any other applicable law.

EFP Applications

- A. To apply for an EFP, please send a letter and a complete EFP application (see item E. below) to the Regional Office, along with a copy of your research plan.
- B. If your project is being funded by one or more of the cooperative research programs in the Northeast (Cooperative Research Program, Research Set- Aside Program, Southern New England Collaborative Initiative, Northeast Consortium, etc.), please identify the funding source on your EFP application, and provide the name of your contact with the cooperative research program.
- C. Applicants must submit an application, including applicable NEPA documents (if necessary), at least 60 days before the desired effective date of the EFP.
- D. An application for an EFP must contain all of the following information.
 1. The date the application is submitted.
 2. The applicant's and/or project coordinator's name, mailing address, telephone number, e-mail, and fax number, if available.
 3. A point of contact who can respond to any questions regarding the project that Regional Office staff may have during consideration of your application.
 4. A statement of the purposes and goals of the experimental fishery for which an EFP is needed.
 5. A list of the specific regulations from which an exemption is being requested and why each exemption is required for the experiment to succeed.
 6. The following catch information:
 - a. The species (target and incidental species must be clearly differentiated) expected to be harvested and/or discarded under the EFP.
 - b. The weight, by species, of such harvest and/or discard anticipated to occur during the experimental fishing, regardless of whether or not it is retained for sale.
 - c. The expected disposition of all regulated species harvested under the EFP (e.g., what you plan on doing with the fish once it is caught).
 - d. Any anticipated impacts on marine mammals or endangered species.
 7. The following anticipated effort information for each vessel:
 - a. For fixed gear:
 - i. Type and size of gear to be used.

- ii. Amount of gear to be used (e.g., number of pots, number of gillnets, etc.).
 - iii. Number of gear hauls.
 - iv. Average soak time.
- b. For mobile gear:
 - i. Type and size of gear to be used.
 - ii. Number of tows to be made per day.
 - iii. Duration and speed of each tow.
 - iv. Number of days during which the experiment will be conducted.
- E. Applications for an EFP trigger review under the National Environmental Policy Act (NEPA). This review may require the preparation of additional documentation beyond the EFP application, including analyses of the potential environmental impacts associated with your project. Staff at the Regional Office in the Regulatory Effectiveness Group may be contacted at (978) 281-9391 for additional information regarding NEPA.
- F. If your project may result in any interactions with endangered or otherwise protected species (e.g., sea turtles, dolphins, whales, sea birds, etc.), your application for an EFP may trigger additional review under either the Endangered Species Act (ESA) or the Marine Mammal Protection Act (MMPA). This review may require the preparation of additional documentation beyond the EFP application. Staff at the Regional Office in the Protected Resources Division may be contacted at (978) 281-9505 for additional information regarding ESA and MMPA.
- G. The EFP application package should be addressed to Patricia A. Kurkul, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. A copy of the original may be sent to Ryan Silva, Cooperative Research Liaison, by e-mail to ryan.silva@noaa.gov, or by fax (978) 281-9315, to facilitate the review process.
- H. EFPs may take up to 60 days to be processed once NMFS has determined that the application package, including any required NEPA, ESA, and/or MMPA documentation, is complete. Submission of a complete EFP application package less than 60 days before the desired effective date of the EFP may result in a delayed effective date.
- I. If you would like to ensure that your application has been received, or have additional questions regarding the EFP application process, please contact Ryan Silva, Cooperative Research Liaison, at (978) 281-9326 or ryan.silva@noaa.gov.

Temporary Possession Permit Applications

- A. An application for a Temporary Possession Permit must contain all of the following information.
1. The date the application is submitted.
 2. The applicant's and/or project coordinator's name, mailing address, telephone number, e-mail, and fax number, if available.
 3. A point of contact who can respond to any questions regarding the project that Regional Office staff may have during consideration of your application.
 4. A statement of the purposes and goals of the experiment for which the permit is needed.
 5. The name(s) of the research personnel that will collect catch data and their affiliation to the institution that is supporting the principal investigator.
 6. A statement demonstrating the technical qualifications of the research personnel.
 7. The vessel name(s), Federal permit number, and documentation or registration number.
 8. The species (target and incidental species must be clearly differentiated) expected to be sampled under the Temporary Possession Permit.
 9. The final disposition of all regulated species harvested under the permit.
 10. The approximate time(s) and place(s) fishing is expected to take place.
 11. The type, size, and amount of gear to be used.
 12. The signature of the applicant.
- B. The Temporary Possession Permit application package should be addressed to Patricia A. Kurkul, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. A copy of the original may be sent to Ryan Silva, Cooperative Research Liaison, by e-mail to ryan.silva@noaa.gov, or by fax (978) 281-9315, to facilitate the review process.
- C. Temporary Possession Permit applications may take up to 14 days to be processed once NMFS has determined that the application package is complete.

LOA and EEAA Applications

- A. To request an LOA or EEAA, please send a letter, on official letterhead from the institution supporting the principal investigator(s), to the Regional Office.
- B. The letter should identify the activity to be conducted, include a copy of the research plan, and provide sufficient information to establish that an LOA or EEAA is warranted and appropriate.
- C. The letter should identify an individual as a point of contact who can respond to any questions regarding the project that Regional Office staff may have during consideration of your request for an LOA or EEAA.
- D. The LOA or EEAA application package should be addressed to Patricia A. Kurkul, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. A copy of the original may be sent to Ryan Silva, Cooperative Research Liaison, by e-mail to ryan.silva@noaa.gov, or by fax (978) 281-9315, to facilitate the review process.
- E. Once a complete application has been received, LOA applications may take up to 30 days, and EEAA applications up to 60 days, to be issued.
- D. If you would like to ensure that your application has been received, or have additional questions regarding the LOA application process, please contact Ryan Silva, Cooperative Research Liaison, at (978) 281-9326 or ryan.silva@noaa.gov.
- E. If you would like to ensure that your application has been received, or have additional questions regarding the LOA application process, please contact Ryan Silva, Cooperative Research Liaison, at (978) 281-9326 or ryan.silva@noaa.gov.

Additional EFP Guidance

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 ESA or MMPA. New impacts that would affect species protected under ESA would require a consultation under section 7 of ESA.

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 NMFS 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.

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. 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. 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.

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

For species with a hard quota/total allowable catch (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, per 50 CFR 648.12(a).

Exemptions that would grant the researcher a specific amount of commercial quota or hard TAC that is not associated with a research set-aside program will not be approved.

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 for the establishment of SAPs. 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.

Table 1: Spawning Periods by Species/Closed Area

Closed Area (CA)	Cod	Haddock	Yellowtail Flounder
CA I	<i>January-March*</i> (October-May)	<i>February-April</i> (January-June)	<i>April-June</i> (March-August)
CA II	<i>February-April</i> (October-May)	<i>February-April</i> (January-June)	<i>April-June</i> (March-August)
Nantucket Lightship CA	not applicable	not applicable	<i>April-June</i> (February-August)
Western Gulf Of Maine	<i>April-May</i> (October-July)	<i>April-May</i> (February-May)	<i>April-June</i> (April-August)
Cashes Ledge	<i>April</i> (October-July)	n/a	n/a

*Peak spawning in italics

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 activities 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.

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 an area open to fishing. 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 (see Table 1). 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.

Applicable Experimental Fishing Regulations

Applicable definitions (50 CFR 600.10)

Conservation engineering means the development and assessment of fishing technologies and fishing techniques designed to conserve target and non-target species, and may include the study of fish behavior and the development and testing of new gear technologies and fishing techniques to minimize bycatch and any adverse effects on essential fish habitat and promote efficient harvest of target species. Conservation engineering may include the assessment of existing fishing technologies applied in novel ways. An example would be assessing the ability of a bycatch reduction device (BRD), designed and proven in one fishery, to reduce bycatch in another fishery. Conservation engineering meeting the definition of scientific research activity is not fishing.

Scientific cruise means the period of time during which a scientific research vessel is operated in furtherance of a scientific research project, beginning when the vessel leaves port to undertake the project and ending when the vessel completes the project as provided for in the applicable scientific research plan.

Scientific research activity is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson-Stevens Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, and to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more topics involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch or other collateral effects of fishing, conservation engineering, and catch estimation of fish species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish outside the scope of the applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display are not scientific research activities. For foreign vessels, such data collection activities are considered scientific research if they are carried out in full cooperation with the United States.

Scientific research plan means a detailed, written formulation, prepared in advance of the research, for the accomplishment of a scientific research project. At a minimum, a sound scientific research plan should include:

- (1) A description of the nature and objectives of the project, including the hypothesis or hypotheses to be tested.
- (2) The experimental design of the project, including a description of the methods to be used, the type and class of any vessel(s) to be used, and a description of sampling equipment.

- (3) The geographical area(s) in which the project is to be conducted.
- (4) The expected date of first appearance and final departure of the research vessel(s) to be employed, and deployment and removal of equipment, as appropriate.
- (5) The expected quantity and species of fish to be taken and their intended disposition, and, if significant amounts of a managed species or species otherwise restricted by size or sex are needed, an explanation of such need.
- (6) The name, address, and telephone/telex/fax number of the sponsoring organization and its director.
- (7) The name, address, and telephone/telex/fax number, and curriculum vitae of the person in charge of the project and, where different, the person in charge of the research project on board the vessel.
- (8) The identity of any vessel(s) to be used including, but not limited to, the vessel's name, official documentation number and IRCS, home port, and name, address, and telephone number of the owner and master.

Scientific research vessel means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as federally funded research and development centers), U.S. state or territorial agency, university (or other educational institution accredited by a recognized national or international accreditation body), international treaty organization, or scientific institution. In order for a domestic commercial fishing vessel to meet this definition, it must be under the control of a qualifying agency or institution, and operate in accordance with a scientific research plan, for the duration of the scientific research activity. In order for a vessel that is owned or chartered and controlled by a foreign government to meet this definition, the vessel must have scientific research as its exclusive mission during the scientific activity in question, and the vessel operations must be conducted in accordance with a scientific research plan.

Scientific research activity, exempted fishing, and exempted educational activity (50 CFR 600.745)

(a) Scientific research activity. Nothing in this part is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities on board a scientific research vessel in the EEZ are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific activity. The Regional Administrator or Director will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a Letter of Acknowledgment. This Letter of Acknowledgment is separate and distinct from any permit or consultation required by the MMPA, the ESA, or any other applicable law. The Regional Administrator or Director will include text in the Letter of Acknowledgment informing the applicant that such a permit may be required and should be obtained from the agency prior to embarking on the activity. If the Regional Administrator or Director, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Administrator or Director will inform the applicant as soon as practicable and in writing. In making this determination, the Regional Administrator, Director, or designee shall consider: the merits of the individual proposal and the

institution(s) involved; whether the proposed activity meets the definition of scientific research activity; and whether the vessel meets all the requirements for a scientific research vessel. The Regional Administrator or Director may also make recommendations to revise the research plan to ensure the activity will be considered to be scientific research activity or recommend the applicant request an EFP. The Regional Administrator or Director may designate a Science and Research Director, or the Assistant Regional Administrator for Sustainable Fisheries, to receive scientific research plans and issue Letters of Acknowledgment. In order to facilitate identification of the activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the Letter of Acknowledgment on board the scientific research vessel and to make it available for inspection upon the request of any authorized officer. It is recommended that for any scientific research activity, any fish, or parts thereof, retained pursuant to such activity be accompanied, during any ex-vessel activities, by a copy of the Letter of Acknowledgment. Activity conducted in accordance with a scientific research plan acknowledged by such a Letter of Acknowledgment is presumed to be scientific research activity. An authorized officer may overcome this presumption by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) Exempted fishing —(1) *General* . A NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. Compensation fishing must be conducted under an EFP if the activity would otherwise be prohibited by applicable regulations unless the activity is specifically authorized under an FMP or a scientific research permit. Conservation engineering that does not meet the definition of scientific research activity, but does meet the definition of fishing must be conducted under an EFP if the activity would otherwise be prohibited by applicable regulations. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display must be permitted under exempted fishing procedures. An EFP exempts a vessel only from those regulations specified in the EFP. All other applicable regulations remain in effect. The Regional Administrator or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Administrator or Director to determine the applicable fee.

(2) *Application*. An applicant for an EFP shall submit a completed application package to the appropriate Regional Administrator or Director, as soon as practicable and at least 60 days before the desired effective date of the EFP. Submission of an EFP application less than 60 days before the desired effective date of the EFP may result in a delayed effective date because of review requirements. The application package must include payment of any required fee as specified by paragraph (b)(1) of this section, and a written application that includes, but is not limited to, the following information:

- (i) The date of the application.
- (ii) The applicant's name, mailing address, and telephone number.

(iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.

(iv) For each vessel to be covered by the EFP, as soon as the information is available and before operations begin under the EFP:

(A) A copy of the USCG documentation, state license, or registration of each vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(v) 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.

(vi) 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.

(vii) The signature of the applicant.

(viii) The Regional Administrator or Director, as appropriate, may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application or an application for which the appropriate fee has not been paid will not be considered until corrected in writing and the fee paid. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested.

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Administrator or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Administrator or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the Federal Register with a brief description of the proposal. Interested persons will be given a 15- to 45-day opportunity to comment on the notice of receipt of the EFP application. In addition, comments may be requested during public testimony at a Council meeting. 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. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Administrator or Director will also forward copies of the application to the Council(s), the U.S. Coast Guard, and the appropriate fishery management agencies of affected states, accompanied by the following information:

(A) The effect of the proposed EFP on the target and incidental species, including the effect on any TAC.

(B) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

(ii) If the application is complete and warrants additional consultation, the Regional Administrator or Director may consult with the appropriate Council(s) concerning the permit application during the period in which comments have been requested. The Council(s) or the Regional Administrator or Director shall notify the applicant in advance of any public meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving a complete application, including all required analyses and consultations (e.g., NEPA, EFH, ESA and MMPA), and having received responses from the public, the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Administrator or Director shall issue the EFP or notify the applicant in writing of the decision to deny the EFP and 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; or

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, threatened or endangered species, or EFH; or

(C) Issuance of the EFP would have economic allocation as its sole purpose (other than compensation fishing); or

(D) Activities to be conducted under the EFP would be inconsistent with the intent of this section, the management objectives of the FMP, or other applicable law; or

(E) The applicant has failed to demonstrate a valid justification for the permit; or

(F) The activity proposed under the EFP could create a significant enforcement problem.

(iv) The decision of a Regional Administrator or Director to grant or deny an EFP is the final action of NMFS. If the permit, as granted, is significantly different from the original application, or is denied, NMFS may publish notification in the Federal Register describing the exempted fishing to be conducted under the EFP or the reasons for denial.

(v) The Regional Administrator or Director should attach, as applicable, 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:

(A) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.

(B) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.

(C) A citation of the regulations from which the vessel is exempted.

(D) The time(s) and place(s) where exempted fishing may be conducted.

(E) The type, size, and amount of gear that may be used by each vessel operated under the EFP.

(F) 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 predeployment notification requirements.

(G) 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.

(H) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.

(I) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures as set out in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

(4) *Acknowledging permit conditions* . 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:

(i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations; and

(ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization and revocation by the Regional Administrator or Director.

(5) *Duration* . Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is valid for no longer than 1 year. EFPs may be renewed following the application procedures in this section.

(6) *Alteration*. Any permit that has been altered, erased, or mutilated is invalid.

(7) *Inspection* . Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer. Any fish, or parts thereof, retained pursuant to an EFP issued under this paragraph must be accompanied, during any ex-vessel activities, by a copy of the EFP.

(8) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(9) *Sanctions.* Failure of a permittee to comply with the terms and conditions of an EFP may be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement purposes will be governed by 15 CFR part 904, subpart D.

(c) *Reports .* (1) NMFS requests that persons conducting scientific research activities from scientific research vessels submit a copy of any report or other publication created as a result of the activity, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director and Regional Administrator or Director.

(2) Upon completion of the activities of the EFP, or periodically as required by the terms and conditions of the EFP, persons fishing under an EFP must submit a report of their catches and any other information required, to the appropriate Regional Administrator or Director, in the manner and within the time frame specified in the EFP, but no later than 6 months after concluding the exempted fishing activity. Persons conducting EFP activities are also requested to submit a copy of any publication prepared as a result of the EFP activity.

(d) *Exempted educational activities* —(1) *General .* A NMFS Regional Administrator or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The trade, barter or sale of fish taken under this authorization is prohibited. The decision of a Regional Administrator or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) *Application.* An applicant for an exempted educational activity authorization shall submit to the appropriate Regional Administrator or Director, at least 15 days before the desired effective date of the authorization, a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.

(iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.

(v) The scope and duration of the activity.

(vi) For each vessel to be covered by the authorization:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(vii) The species and amounts expected to be caught during the exempted educational activity, and any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

(viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(ix) The signature of the applicant.

(x) The Regional Administrator or Director may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a determination whether the application contains all of the required information, is consistent with the goals, objectives, and requirements of the FMP or regulations and other applicable law, and constitutes a valid exempted educational activity. The applicant will be notified in writing of the decision within 5 working days of receipt of the application.

(ii) The Regional Administrator or Director should attach, as applicable, terms and conditions to the authorization, consistent with the purpose of the exempted educational activity and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

(A) The maximum amount of each regulated species that may be harvested.

(B) A citation of the regulations from which the vessel is being exempted.

(C) The time(s) and place(s) where the exempted educational activity may be conducted.

(D) The type, size, and amount of gear that may be used by each vessel operated under the authorization.

(E) Data reporting requirements necessary to document the activities and to determine compliance with the terms and conditions of the exempted educational activity.

(F) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.

(G) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activities as a condition of the authorization.

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), persons, species, and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

(4) *Duration.* Unless otherwise specified, authorization for an exempted educational activity is effective for no longer than 1 year, unless revoked, suspended, or modified. Authorizations may be renewed following the application procedures in this section.

(5) *Alteration.* Any authorization that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* Authorizations issued under this paragraph (d) are not transferable or assignable.

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued, or be in the possession of at least one of the persons identified in the authorization, who must be present while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of “fishing,” despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal. Any fish, or parts thereof, retained pursuant to an authorization issued under this paragraph must be accompanied, during any ex-vessel activities, by a copy of the authorization.

(e) *Observers.* NMFS-sanctioned observers or biological technicians conducting activities within NMFS-approved sea sampling and/or observer protocols are exempt from the requirement to obtain an EFP. For purposes of this section, NMFS-sanctioned observers or biological technicians include NMFS employees, NMFS observers, observers who are employees of NMFS-contracted observer providers, and observers who are employees of NMFS-permitted observer providers.

Northeast Region experimental fishing regulations (50 CFR 648.12)

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), and O (skates) 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 regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

(a) The Regional Administrator may not grant such an exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the management objectives of the respective FMP, the provisions of the Magnuson-Stevens Act, and other applicable law, and that granting the exemption will not:

- (1) Have a detrimental effect on the respective resources and fishery;
- (2) Cause any quota to be exceeded; or
- (3) Create significant enforcement problems.

(b) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of the respective FMP, except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Administrator to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

(c) Experimental fishing for surf clams or ocean quahogs will not require an allocation permit.

(d) *Temporary possession letter of authorization (LOA)* : The Regional Administrator (RA), or the RA's designee, may issue an LOA to eligible researchers on board federally permitted fishing vessels on which species of fish that otherwise could not be legally retained would be possessed temporarily for the purpose of collecting catch data. Under this authorization, such species of fish could be retained temporarily for data collection purposes, but shall be discarded as soon as practicable following data collection.

(1) *Eligible activities* . An LOA may be issued by the RA, or the RA's designee, to temporarily exempt a vessel, on which a qualified fishery research technician is collecting catch data, from the following types of fishery regulations: Minimum fish size restrictions; fish possession limits; species quota closures; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions.

(2) *Eligibility criteria* . Only personnel from the following bodies are eligible for a temporary possession LOA: Foreign government agency; U.S. Government agency; U.S. state or territorial agency; university (or other educational institution accredited by a recognized national or international accreditation body); international treaty organization; or scientific institution.

(3) *Application requirements* . To obtain a temporary possession LOA, an eligible applicant, as defined under paragraph (d)(2) of this section, is required to submit a complete application, which must contain the following information: The date of the application; the applicant's name, mailing address, and telephone number; a statement of the purposes and goals for which the LOA is needed; the name(s) and affiliation of the fishery research technicians will collect the data; a statement demonstrating the qualifications of the research technician that will collect the data; the species (target and incidental) expected to be harvested under the LOA; the proposed disposition of all regulated species harvested under the LOA; the approximate time(s) and place(s) fishing will take place; the type, size, and amount of gear to be used; and the signature of the applicant. In addition, for each vessel to be covered by the LOA, as soon as the information is available and before operations begin, the applicant is required to supply to NMFS the vessel operator name, the vessel's Federal fishing permit number, and the vessel registration or documentation number.