

**WILD OCEANS * AKORN ENVIRONMENTAL CONSULTING, LLC
AMERICAN SPORTFISHING ASSOCIATION * CONSERVATION LAW FOUNDATION
GREAT EGG HARBOR WATERSHED ASSOCIATION
INTERNATIONAL GAME FISH ASSOCIATION * NATIONAL AUDUBON SOCIETY
RHODE ISLAND SALTWATER ANGLERS ASSOCIATION
RIVERKEEPER, INC. * THEODORE ROOSEVELT CONSERVATION PARTNERSHIP
VIRGINIA SALTWATER SPORTFISHING ASSOCIATION**

April 26, 2023

Dr. Christopher Moore, Executive Director
Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201
Dover, DE 19901

RE: Ecosystem and Ocean Planning Committee & Advisory Panel Meeting, April 27:
Development of a policy/process for reviewing Exempted Fishing Permit (EFP) applications for
Unmanaged Forage Amendment ecosystem component species

Dear Dr. Moore and members of the Ecosystem and Ocean Planning Committee,

We write in strong support of the Council's intent stated in its 2023 Implementation Plan, to "Develop a policy and/or process for reviewing Exempted Fishery Permit (EFP) applications for new or expanding fisheries as it relates to the unmanaged forage amendment." We encourage the Ecosystem and Ocean Planning (EOP) Committee at its April 27, 2023 meeting to take full advantage of staff's request that the EOP Committee Provide guidance to staff on development of a draft policy/process, by drawing on your own expertise, as well as the success of the Pacific Fishery Management Council in developing of its own policy and process to evaluate EFP applications on unmanaged forage species, known as Council Operating Procedure 24 (COP 24).

This letter of support follows our strong opposition in 2021 to advancing for further consideration the Lund's Fisheries Atlantic Thread Herring Exempted Fishing Permit (EFP) application.¹ We have attached this letter of opposition signed by Wild Oceans as well as 12 other recreational fishing and conservation groups (**Appendix A**). Many of the undersigned groups on the 2021 letter and herein were actively involved in the development of the Unmanaged Forage Omnibus Amendment (UFOA), and commended the Mid-Atlantic Fishery Management Council for recognizing the ecological importance of forage fish to the region's

diverse marine life and to valuable commercial and recreational fisheries. We found the EFP application to be inconsistent with the purpose of the UFOA, as well as the Council's Ecosystem Approach to Fisheries Management Guidance Document forage fish policy. The application has since been revised and resubmitted to NOAA's Greater Atlantic Regional Fisheries Office (GARFO), and GARFO has requested Council guidance on how to proceed with the application. As the first EFP to be submitted under the UFOA, the Atlantic thread herring fishery application review will set a precedent for other potential unmanaged forage EFPs in the region.

The MAFMC is fortunate to have a model in the form of COP 24, which was explicitly requested by the Pacific Fishery Management Council in the form of direction to its ad-hoc Ecosystem Work Group. This group is normally composed of about 12 members drawn from PhD science staff at NOAA Fisheries Science Centers (5 members), resource specialist staff at NOAA Fisheries Science Centers (1 member), PhD science tribal representatives (2 members), PhD science staff at state fish and wildlife agencies (2 members), and resource specialist staff at state fish and wildlife agencies (2 members). A NMFS Senior Resource Specialist led the development of COP 24 in collaboration with Pacific Council staff and other scientists and policy experts at NMFS and on the Ecosystem Work Group. **Appendix B** includes the timeline, Council direction, and key documents related to the development of COP 24. We hope these resources will be helpful to the EOP Committee.

We appreciate the April to October 2023 proposed timeline for completion and adoption of a Council policy and process for unmanaged forage EFP application reviews and believe that the groundwork laid by the Pacific Council will assist the EOP Committee in meeting the timeline deliverables. We stand ready to support this process and thank you for your time engaging in the coming months.

Sincerely,

Pam Lyons-Gromen
Executive Director
Wild Oceans

Aaron Kornbluth
Founder/Owner
akorn environmental consulting, LLC

Michael Waine
Atlantic Fisheries Policy Director
American Sportfishing Association

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Dr. Donald Lyons
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George Jackman
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Riverkeeper. Inc.

Chris Macaluso
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Theodore Roosevelt Conservation
Partnership

John Bello
Chairman, Government Relations
Virginia Saltwater Sportfishing Association

Cc: Julia Beaty, Fishery Management Specialist
Mid-Atlantic Fishery Management Council

Appendix A

October, 2021 letter to EOP Committee from Wild Oceans and 12 other recreational fishing and conservation groups. Attached.

Appendix B

Pacific Fishery Management Council (PFMC) process to develop COP 24. Below.

April 2014 PFMC meeting- Two advisory bodies, the Coastal Pelagic Species Subpanel, and Salmon Advisory Subpanel, both express concern about a lack of a process in place to evaluate or act on transitioning a species from Ecosystem Component to Fishery Management Unit. Based on this input, the PFMC directs the Ecosystem Working Group to develop a Council Operating Procedure to provide a framework for the Council and the public to evaluate the potential impacts of such a fishery to existing fisheries, the fishing community, and the ecosystem.

September 2014 PFMC meeting- “ In response to Council guidance in April, the ad hoc Ecosystem Workgroup (EWG) has prepared a summary report (Agenda Item H.1.a, EWG Summary Report) and a draft Environmental Assessment for CEBA-1 (Agenda Item H.1.a, Attachment 1) that updates the list of forage fish species, revises the alternatives to address incidental take, provides draft FMP amendment language for each of the four FMPs, and proposes a new Council Operating Procedure regarding exempted fishing permits for forage fish species. At this meeting, the Council is scheduled to affirm a preliminary preferred alternative, adopt public review draft amendment language, and consider a new Council Operating Procedure. The Council is scheduled to take final action and adopt a final preferred alternative for this initiative at its March 2015 meeting.”

<https://www.pcouncil.org/documents/2014/09/h-ecosystem-based-management-september-2014.pdf/>

October 2014- PFMC sends letter to reviewers asking them to review the FMP amendments and COP 24. See Slide 5:

<https://www.pcouncil.org/documents/2015/03/agenda-item-e-4-a-and-e-4-b-supplemental-ewg-powerpoint.pdf/>

September 2014 PFMC meeting: Council approved the draft FMP language and COP 24 for public review. "Draft COP 24 is based on this action's Purpose and Need (Section 1.2) and on the Council's policy on the development of new fisheries for unfished species (FEP Appendix at A.1.1), and structured similarly to existing COPs associated with FMP fisheries: COP 19, Protocol for Consideration of Exempted Fishing Permits for Groundfish Fisheries; COP 20, Protocol for Consideration of Exempted Fishing Permits for Highly Migratory Species Fisheries; and COP 23, Protocol for Consideration of Exempted Fishing Permits for Coastal Pelagic Species Fisheries. Should a U.S. citizen want to develop targeted fisheries for Shared EC Species at some future time, COP 24 would provide the Council and the public a framework for evaluating the potential impacts of such a fishery to existing fisheries, fishing communities, and the greater marine ecosystem (See Section 1.2, Purpose and Need statement)."

<https://www.pcouncil.org/documents/2014/09/h-ecosystem-based-management-september-2014.pdf/>

March 2015 Council meeting- COP 24 discussed along with the draft FMP amendments. "CEBA 1 prohibits the development of new directed commercial fisheries for Shared EC species within the U.S. West Coast EEZ, while allowing existing incidental harvest of these species to continue to occur. However, CEBA 1 also includes Council Operating Procedure (COP) 24, which specifies conditions for exempted fishing permits to collect scientific information on the feasibility of future fisheries targeting Shared EC Species. COP 24 does not assume that future fisheries for Shared EC Species will occur; instead, it sets out conditions for collecting scientific information in case there is future public interest in beginning new fisheries for Shared EC Species."

<https://www.pcouncil.org/documents/2015/03/agenda-item-e-4-b-ewg-report.pdf/>

From NMFS Report: "Council Operating Procedure 24 provides this Council's specific requirements for applicants interested in a West Coast EFP for Shared EC Species."

September 2015 PFMC meeting- PFMC adopts COP 24 with [no opposition](#) from industry groups. "The EWG provided draft COP 24 at the March 2015 and prior meetings in response to requests from the Council and its advisory bodies for a process for collecting scientific information on future potential forage fish fisheries. The CEBA 1 FMP amendment language that the Council adopted in March 2015 refers to COP 24 in each FMP – see this report's appendix for FMP language. COP 24 would provide a vehicle for exploring needed scientific information through an exempted fishing permit (EFP) review and approval process. COP 24 would not assume that the Council will approve any future fisheries for Shared EC Species. COP 24 is modeled on existing Council COPs 19, 20, and 23, which provide protocols for Council consideration of EFPs for groundfish, highly migratory species, and coastal pelagic species, respectively. " <https://www.pcouncil.org/documents/2015/09/agenda-item-d-2-a-ewg-report.pdf>

- American Sportfishing Association •Coastal Conservation Association
- Conservation Law Foundation •Great Egg Harbor Watershed Association
- Gotham Whale •International Game Fish Association •Menhaden Defenders
- National Audubon Society
- Rhode Island Saltwater Anglers Association •Riverkeeper, Inc.
- Theodore Roosevelt Conservation Partnership
- Virginia Saltwater Sportfishing Association •Wild Oceans

October 1, 2021

Kate Wilke, Chair
Ecosystem and Ocean Planning Committee
Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201
Dover, DE 19901

Dear Ms. Wilke,

We write today to strongly oppose advancing for further consideration, the Atlantic Thread Herring Exempted Fishing Permit (EFP) application¹ (Application) that will be discussed by the Ecosystem and Ocean Planning Committee on October 4th.

The applicant is seeking an exemption from regulations implemented under the Unmanaged Forage Omnibus Amendment (UFOA) that the Council completed in 2017 after two years of hard work. Many of the undersigned groups were actively involved in the UFOA's development and commended the Mid-Atlantic Fishery Management Council for recognizing the ecological importance of forage fish to the region's diverse marine life and to valuable commercial and recreational fisheries.

As clearly stated in the Final Rule implementing the Unmanaged Forage Omnibus Amendment:

The objective of this action is to prevent the development of new, and the expansion of existing, commercial fisheries on certain forage species until the Council has adequate opportunity and information to *evaluate the potential impacts of forage fish harvest on existing fisheries, fishing communities, and the marine ecosystem* [emphasis added].²

The Application is inconsistent with this main objective.

The applicants are requesting an exemption from the key regulatory provision within the UFOA – 1,700 pound combined possession limit for unmanaged forage taxa designated as ecosystem component species – without addressing the objective behind it. Atlantic thread herring were included in the list of EC species because they, along with other clupeids, have been found in the stomachs of council-managed monkfish, bluefish, summer flounder, black sea bass and spiny

¹https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/613654c59a810e50b5c10384/1630950597923/b_Lunds+Thread+Herring+EFP+Application+and+Project+Description.pdf

² 82 FR 4072, <https://www.federalregister.gov/d/2017-18034>.

dogfish³ as well as in the diets of protected whales, dolphins, porpoises and seals. Multiple seabird species (royal terns, laughing gulls, black skimmers, double-crested cormorants and osprey) incorporate thread herring into their diets across a large portion of the Atlantic Coast.⁴ Though the Application calls for trip limits up to 100,000 pounds (nearly a 60-fold increase from the current possession limit), it fails to include a research or data collection component that would evaluate impacts on predators and dependent fisheries, for example recreational fisheries for king mackerel and bluefish, major predators of thread herring,⁵ and impacts to the greater ecosystem that could result from entanglements of protected species and discarded bycatch.

A multi-year EFP is requested with an annual catch limit of 6.6 million pounds, an amount that exceeds the annual catch limit for chub mackerel,⁶ a data-poor forage species found to be in need of conservation and management through the UFOA that is now managed under the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan (FMP). In addition, the gear specified, 1-inch mesh purse seines of approximately 2,000 feet in length and 180 feet in depth, is untested in Mid-Atlantic federal waters, raising alarms about the potential for bycatch of feeding predators and other small pelagic fish, such as depleted river herring and shad that migrate in federal waters along the coast.⁷ No at-sea monitoring program is proposed that would provide for an objective observer trained in high-volume fisheries sampling to assess and evaluate bycatch.

The Mid-Atlantic Council was clear that it “does not intend to prohibit directed commercial fisheries for unmanaged forage species indefinitely.” EFPs were chosen as the method by which the Council will consider allowing new fisheries or the expansion of existing fisheries. Importantly, national regulations (50 CFR 600.745) regarding the approval or disapproval of an EFP require information to be provided about the effects on both the target and incidental species as well as an assessment of environmental impacts, including impacts on fisheries, marine mammals, threatened or endangered species, and essential fish habitat (EFH) which includes prey species and their habitat.^{8,9} Grounds for denying a permit include inconsistency with the management objectives of the FMP.¹⁰ The Regional Administrator must determine that the purpose, design, and administration of the exemption are consistent with the management objectives of the respective FMP, the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and other applicable law.¹¹

In addition to not meeting the objective of the Unmanaged Forage Omnibus Amendment, the Application is inconsistent with the Council’s Ecosystem Approach to Fisheries Management Guidance Document policy, “to support the maintenance of an adequate forage base in the Mid-Atlantic to ensure ecosystem productivity, structure and function and to support sustainable fishing communities,”¹² which is reflected in the 2020-2024 Strategic Plan Ecosystem Goal to

³ MAFMC. 2017. Unmanaged Forage Omnibus Amendment Including an Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Act Analysis, p. 52, http://www.mafmc.org/s/20170613_Final-Forage-EA_FONSI-Signed.pdf.

⁴ Lyons, Donald. Letter to Brandon Muffley. Thread Herring EFP Application, September 1, 2021, https://www.mafmc.org/s/S1_Email-from-Don-Lyons_Audobon_on-Thread-Herring-EFP.pdf.

⁵ Florida Fish and Wildlife Commission. “Florida’s Inshore and Nearshore Species: 2020 Status and Trends Report - Atlantic Thread Herring,” <https://myfwc.com/media/26255/status-trends-atlantic-herring.pdf>.

⁶ “NOAA Fisheries.” NOAA Fisheries Implements Atlantic Chub Mackerel Measures, <https://content.govdelivery.com/accounts/USNOAAFISHERIES/bulletins/298892e>.

⁷ “Atlantic States Marine Fisheries Commission.” species – Shad and River Herring, <http://www.asafc.org/species/shad-river-herring>.

⁸ 50 CFR § 600.745(b)(3)

⁹ 50 CFR § 600.910

¹⁰ 50 CFR § 600.745(d)(3)(ii)(F)

¹¹ 50 CFR § 648.12

¹² “Mid-Atlantic Fishery Management Council.” Ecosystem Approach to Fisheries Management, <https://www.mafmc.org/ea/fm>.

“support the maintenance of an adequate forage base to ensure ecosystem productivity, structure, and function.”¹³

Thus, we suggest that the EOP Committee consider this EFP application as an opportunity to initiate a set of guidelines for considering EFP applications for ecosystem component species under the UFOA. Protocol, such as that utilized by the Pacific Fishery Management Council under Council Operating Procedure 24 (COP-24),¹⁴ would ensure a consistent approach to meeting the Council’s ecosystem and FMP objectives, the EFP criteria described in national and regional regulations, and the requirements of the MSA.

Because of the deficiencies described above, we strongly oppose advancing the Atlantic Thread Herring EFP application for further consideration. At this time along our coastline, Atlantic herring and Atlantic mackerel are overfished and alewife, blueback herring and American shad are severely depleted. As fishermen seek opportunities to shift to new target species, our fishery management programs must take into account that the changing composition of the forage base is affecting predators as well as existing forage fisheries. A pathway to ecologically-sustainable new fisheries must include strategies to improve our understanding of ecosystem impacts, as the Mid-Atlantic Council rightly recognized when creating the Unmanaged Forage Omnibus Amendment.

Sincerely,

Wild Oceans
Pam Lyons Gromen
Executive Director

National Audubon Society
Anna Weinstein
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American Sportfishing Association
Michael W. Waine
Atlantic Fisheries Policy Director

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¹³ “Mid-Atlantic Fishery Management Council.” MAFMC Strategic Plan, <https://www.mafmc.org/strategic-plan>.

¹⁴ Pacific Fishery Management Council. “Council Operating Procedures as Amended through April 2021. Council Operating Procedure 24: Protocol for Consideration of Exempted Fishing Permits for Shared Ecosystem Component Species,” <https://www.pcouncil.org/documents/2020/09/current-operating-procedures.pdf/>.

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