



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.: 150629565-6224-02]

RIN 0648-BF15

Fisheries Off West Coast States; Comprehensive Ecosystem-Based Amendment 1; Amendments to the Fishery Management Plans for Coastal Pelagic Species, Pacific Coast Groundfish, U.S. West Coast Highly Migratory Species, and Pacific Coast Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Comprehensive Ecosystem-Based Amendment 1 (CEBA 1), which includes amendments to the Pacific Fishery Management Council's (Council's) four fishery management plans (FMPs): the Coastal Pelagic Species (CPS) FMP, the Pacific Coast Groundfish FMP, the FMP for U.S. West Coast Highly Migratory Species (HMS), and the Pacific Coast Salmon FMP. CEBA 1 amended the Council's FMPs to bring new ecosystem component species (collectively, "Shared EC Species") into each of those FMPs, and prohibits directed commercial fisheries for Shared EC Species within the U.S. West Coast Exclusive Economic Zone (EEZ). This final rule defines and prohibits directed commercial fishing for Shared EC Species, and prohibits, with limited exceptions, at-sea processing of Shared EC Species.

DATES: Effective May 4, 2016.

ADDRESSES: Electronic copies of CEBA 1 may be obtained from the Council Web site at <http://www.pcouncil.org>. Electronic copies of the environmental assessment and final regulatory flexibility analysis for this action may be obtained from the West Coast Regional Office website at <http://www.westcoast.fisheries.noaa.gov/fisheries/ecosystem/index.html>.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206-526-6129, Yvonne.deReynier@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a notice of availability of CEBA 1 in the **Federal Register** (80 FR 76924, December 11, 2015) to notify the public of the availability of the FMP amendments and invite comments. NMFS published a proposed rule to implement CEBA 1 on January 5, 2016 (81 FR 215). NMFS accepted public comments on the FMP amendments and proposed rule through February 9, 2016.

CEBA 1, through its implementing FMP amendments and regulations, prohibits the development of fisheries for a suite of ecosystem component species (collectively, “Shared EC Species”) within the U.S. West Coast EEZ until the Council has had an adequate opportunity to both assess the scientific information relating to any proposed directed fishery and consider potential impacts to existing fisheries, fishing communities, and the greater marine ecosystem. CEBA 1 includes these FMP amendments: Amendment 15 to the CPS FMP, Amendment 25 to the Pacific Coast Groundfish FMP, Amendment 3 to the FMP for U.S. West Coast HMS, and Amendment 19 to the Pacific Coast Salmon FMP. CEBA 1 adds the following species as Shared EC Species to each of the four West Coast FMPs: round herring (*Etrumeus teres*) and thread herring (*Opisthonema libertate* and *O. medirastre*); mesopelagic fishes of the families

Myctophidae, Bathylagidae, Paralepididae, and Gonostomatidae; Pacific sand lance (*Ammodytes hexapterus*); Pacific saury (*Cololabis saira*); silversides (family *Atherinopsidae*); smelts of the family *Osmeridae*; and pelagic squids (families: *Cranchiidae, Gonatidae, Histioteuthidae, Octopoteuthidae, Ommastrephidae* except Humboldt squid (*Dosidicus gigas*), *Onychoteuthidae*, and *Thysanoteuthidae*).

This final rule revises 50 CFR 660.1(a) to clarify that the regulations in Part 660 of Title 50 of the Code of Federal Regulations are not limited to fishing for management unit species, but are applicable generally to vessels fishing within the U.S. West Coast EEZ. This rule also adds new regulations at 50 CFR part 660, subpart B, that: 1) identify Shared EC Species as including the unfished forage species listed earlier in the preamble to this rule; 2) define what is meant by “directed commercial fishing” for Shared EC Species within the U.S. West Coast EEZ; 3) prohibit directed commercial fishing for Shared EC Species; and 4) prohibit at-sea processing of Shared EC Species, except while otherwise lawfully processing groundfish in accordance with 50 CFR part 600, subpart D. This action is needed to proactively protect unmanaged, unfished forage fish of the U.S. West Coast EEZ, in recognition of the importance of these forage fish to the species managed under the Council’s FMPs and to the larger California Current Ecosystem. Shared EC Species have not historically been targeted or processed in EEZ fisheries, and the limits provided in this final rule are intended to recognize that low levels of incidental catch of Shared EC Species may continue to occur. This action does not supersede tribal or state fishery management for these species.

Public Comments and Responses

NMFS received 63 letters and emails supporting the finalization of CEBA 1 and its implementing regulations during the public comment period. Within the letters of support,

NMFS received a letter from the U.S. Department of the Interior requesting clarification on whether essential fish habitat (EFH) would be defined for Shared EC Species. Several letters from environmental organizations included petitions supporting the action, with signatures or comments from 91,966 people supporting the action. Two of the letters of support were received from organizations of fishermen and vessel owners asking for clarifications of or revisions to the regulations language. In addition to the letters and emails supporting the action, NMFS also received a letter from an organization of fishermen and vessel owners recommending clarifications to the final rule. NMFS appreciates the broad public interest in this rulemaking and has taken the strong public support it received during the comment period into account in its approval of this final rule. Comments requesting clarification on regulatory issues, or suggesting revisions to regulatory language implementing this action are summarized below, with NMFS's responses to those comments.

Comment 1: The Department of the Interior requests clarification on whether NMFS will designate EFH for Shared EC Species.

Response: NMFS will not designate EFH for Shared EC Species. Under Federal regulations at 50 CFR 600.805(b), EFH must be designated for all species within an FMP's fishery management unit. In contrast, federal regulations at 50 CFR 600.310(d)(5) characterize ecosystem component species as species that are: not in the fishery or fishery management unit, not the target of Federal fisheries, not overfished or approaching an overfished condition, and not generally retained for sale. Occasional retention of ecosystem component species does not preclude their characterization as ecosystem component species. The species identified by this action as within the Shared EC Species group meet the guidance at 50 CFR 600.310(d)(5) for

classification as ecosystem component species, rather than as fishery management species. Therefore, NMFS does not need to designate EFH for Shared EC Species.

Comment 2: Some of the letters or emails supporting this action asked that NMFS also prohibit fishing for krill, either off the West Coast or elsewhere in the U.S., in addition to the prohibitions on fishing for species classified as Shared EC Species by this action.

Response: Under Federal regulations at 50 CFR 660.505(o), fishing for krill has been prohibited in the EEZ off the U.S. West Coast since 2009 (74 FR 33372, July 13, 2009). This action does not address fisheries occurring outside of the U.S. West Coast EEZ; furthermore there is no known fishing for krill by U.S. vessels on the high seas.

Comment 3: An organization representing fishermen and fishing vessel owners described upheavals in West Coast salmon and Dungeness crab fisheries resulting from recent unusual environmental conditions. The organization asked that NMFS or the Council provide guidance to the fishing industry on whether there are avenues for developing future sustainable fisheries on Shared EC Species, should the need arise.

Response: The Council explicitly considered this issue in developing CEBA 1 and made provisions for allowing future fishing interests to experiment with directed fishing for Shared EC Species, to provide the Council with scientific information that would allow it to consider opening a fishery for these species, considering potential impacts to existing fisheries, fishing communities, and the greater marine ecosystem. Although this action revises Federal regulations to prohibit directed fishing for Shared EC Species, some future Council could recommend revising those regulations to accommodate a sustainable directed fishery for a species now classified as a Shared EC Species. NMFS and the Council have a regular practice for existing West Coast fisheries of encouraging innovative gear types or fishing methods that may not be

allowed in Federal regulations by considering exempted fishing permits (EFPs) for the proposed new gear type or fishing method. To ensure that the Council receives consistent and thoughtfully-designed EFP proposals, it maintains Operating Procedures outlining its requirements for considering EFPs for new or experimental fisheries or gear. As part of its work on CEBA 1, the Council adopted its Operating Procedure 24, a Protocol for Consideration of Exempted Fishing Permits for Shared Ecosystem Component Species. Ultimately, to allow a directed fishery for a species now classified as a Shared EC Species, the Council and NMFS would have to review the potential fishery and species for inclusion in an FMP as a fishery management unit species, and would then have to consider Federal regulations to implement that fishery. This process of considering revisions to fishing regulations by using information gained in EFP fisheries is common in the West Coast Federal fisheries management process. NMFS supports the Council's thorough work on the CEBA 1 package of FMP amendments, implementing regulations, and operating procedure for future potential EFPs. Together, the elements of CEBA 1 reflect an understanding of the current state of science on West Coast marine species and of the Federal fisheries laws and regulations that affect those species, while also leaving flexibility for future fishermen and fisheries managers to work with changes in the ecosystem and updates in fisheries and ocean science.

Comment 4: An organization representing companies that own whiting vessels noted that the Council described the purpose of CEBA 1 as prohibiting new directed commercial fishing in Federal waters on unmanaged, unfished forage fish species until the Council has had an adequate opportunity to both assess the scientific information relating to any proposed directed fishery and consider potential impacts to existing fisheries, fishing communities, and the greater marine ecosystem. The commenter asks why the proposed rule implementing CEBA 1 appears to

prohibit any directed fisheries for Shared EC species, rather than prohibiting only new directed fisheries for Shared EC Species.

Response: There are no existing directed fisheries for Shared EC Species in the U.S. West Coast EEZ; therefore, any future directed fishing for Shared EC Species would be new directed fishing. Adding the word “new” to the regulation would be confusing and superfluous.

Comment 5: An organization representing CPS fishermen and fishing vessel owners recommended that, in the preamble to this final rule, NMFS reiterate the Council’s full purpose and need statement for CEBA 1. This organization also expressed concern that the proposed definition of directed fishing for Shared EC Species did not allow for high enough levels of incidental landings to account for unique historic events where Shared EC Species were taken incidentally with species managed under a Council FMP, and suggested that only the historically highest landings of 52 mt per day with an annual vessel limit of 225 mt per year would account for unique historic events. Finally, the organization noted that climate change could bring shifts in the composition of species occurring off the U.S. West Coast and asked that, in the final rule for this action, NMFS establish a two-year review period for this action to assess the impacts of the action.

Response: As discussed in the preamble to the proposed rule for this action, and as quoted by the commenter who submitted Comment 4, the purpose of this action, according to the environmental assessment for the action, is to “prohibit new directed commercial fishing in Federal waters on unmanaged, unfished forage fish species until the Council has had an adequate opportunity to both assess the scientific information relating to any proposed directed fishery and consider potential impacts to existing fisheries, fishing communities, and the greater marine ecosystem.”

In the analysis that NMFS conducted to review potential limits for allowable incidental landings levels of Shared EC Species, NMFS noted that the highest daily landing level for the 2005-2014 period of groups of species that were predominantly Shared EC Species, but which could also have included Humboldt squid, was 52 mt. NMFS also noted that a daily incidental landing level of 10 mt would account for 99 percent of all historic daily landings levels. For annual total landings of species groups that were predominantly Shared EC Species, but which could also have included Humboldt squid, the highest historic annual landing level was 225 mt, while an annual limit of 30 mt would account for 97 percent of all historic annual landings levels. Between approximately 2006 and 2010 and peaking in 2008, the waters off the U.S. West Coast were inundated with large schools of Humboldt squid, which is not a Shared EC Species. Due to the somewhat surprising nature of this mass squid migration and population explosion, West Coast fisheries data collection programs were not initially equipped to separately identify Humboldt squid from other squid species on fish landings tickets. For these regulations, the Council recommended a Shared EC Species daily incidental landing limit of 10 mt and an annual cumulative landing limit of 30 mt, knowing that historic landings at those levels could possibly have included some Humboldt squid, also known as “jumbo” squid for its large size. NMFS believes that the limits recommended by the Council, provided in the proposed rule for this action, and finalized with this final rule, strike an appropriate balance between being high enough to account for unique historic incidental catch of Shared EC Species, without being so high as to allow or encourage targeting of those species. The NMFS analysis of historic West Coast landings of Shared EC Species, including discussions explaining the constraints of the fisheries landings data, is available on the Council’s website for its September 2015 meeting:

http://www.pcouncil.org/wp-content/uploads/2015/08/D2a_SUP_NMFS_Rpt_forage_SEPT2015BB.pdf.

The Council can schedule a review of these regulations and their effects at any time. Regulations at 50 CFR part 660 govern the actions of fishermen, fishing vessel owners, and fisheries participants operating in the U.S. West Coast EEZ. The scope of this action did not include the activities of the Council itself, and therefore this final rule does not include any provisions governing the actions of the Council.

Changes from the Proposed Rule

There are no changes to the regulatory text from the proposed rule, except for a minor and non-substantive grammatical correction to 50 CFR 660.1(a), changing the word “of” to “by,” when referring to fishing activity by vessels of the United States.

Classification

The Administrator, West Coast Region, NMFS, determined that the FMP amendments implementing CEBA 1 are necessary for conservation and management of West Coast fisheries, and that they are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared pursuant to 5 U.S.C. 604(a), and incorporates the Initial Regulatory Flexibility Analysis (IRFA), and NMFS’s responses to comments received on the IRFA, if any. NMFS did not receive any comments from the public on the IRFA for this action. The preamble to the proposed rule for this action included a detailed summary of the analyses contained in IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

A Statement of the Need for, and Objectives of, the Rule

This rule prohibits new directed commercial fishing in Federal waters on unmanaged, unfished forage fish species until the Council has had an adequate opportunity to both assess the scientific information relating to any proposed directed fishery and consider potential impacts to existing fisheries, fishing communities, and the greater marine ecosystem. This action is needed to proactively protect unmanaged, unfished forage fish of the U.S. West Coast EEZ in recognition of the importance of these forage fish to the species managed under the Council's FMPs and to the larger CCE. This action is not intended to supersede tribal or state fishery management for these species, and coordination would still occur through the existing Council process. CEBA 1 brings new ecosystem component species into each of the Council's four FMPs through amendments to those FMPs, and protects those species by prohibiting the future development of new directed commercial fisheries for Shared EC Species within the U.S. West Coast EEZ. No existing fisheries will be eliminated by this action. Under this rulemaking, existing levels of incidental catch of Shared EC Species in current fisheries will be allowed to continue into the future.

A Summary of Significant Issues Raised by the Public in Response to the Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result

No public comments were received by NMFS in response to the IRFA or the economic analyses summarized in the IRFA, and no changes were required to be made as a result of the public comments. A summary of the comments received, and our responses, can be found above in the "Comments and Responses" section of this rule's preamble.

Response of the Agency to any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule

The Small Business Administration did not provide any comments on the proposed rule for this action.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

This rule will have no direct impact on any small entities.

A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule

This action does not contain any Federal reporting, record keeping, or any other compliance requirements for either small or large entities.

A description of the Steps the Agency has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

Alternative 2, the selected alternative for this rule, accomplishes the stated objectives of applicable statutes without any significant economic impact on small entities. Alternative 1, the no-action alternative, also would not have had any direct economic impact on small entities, but did not accomplish the state objectives of applicable statutes. Alternative 3 was expected to have moderate, indirect and negative effects on coastal pelagic species, shrimp, bottom trawl, and whiting fisheries and fishery management practices and was thus rejected in favor of the selected alternative in order to minimize economic impact on small entities consistent with the stated objectives of applicable statutes. A copy of this analysis is available from NMFS (see **ADDRESSES**). Copies of the Small Entity Compliance Guide prepared for this final rule are available on the West Coast Region's Web site at <http://www.westcoast.fisheries.noaa.gov/>.

This final rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. NMFS is not aware of any Treaty Indian tribe or subsistence fisheries in the EEZ other than those listed in 50 CFR 600.725(v). This action does not supersede or otherwise affect exemptions that exist for Treaty Indian fisheries.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, Fisheries, Fishing.

Dated: March 29, 2016

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.1 revise paragraph (a) to read as follows:

§ 660.1 Purpose and scope.

(a) The regulations in this part govern fishing activity by vessels of the United States that fish or support fishing inside the outer boundary of the EEZ off the states of Washington, Oregon, and California.

* * * * *

3. Add subpart B to read as follows:

Subpart B -- All West Coast EEZ Fisheries

Sec.

660.5 Shared Ecosystem Component Species.

660.6 Prohibitions.

§ 660.5 Shared Ecosystem Component Species.

(a) *General.* The FMPs implemented in this part 660 each contain ecosystem component species specific to each FMP, as well as a group of ecosystem component species shared between all of the FMPs. Ecosystem component species shared between all of the Pacific Fishery Management Council's FMPs, and known collectively as "Shared EC Species," are:

(1) Round herring (*Etrumeus teres*) and thread herring (*Ophisthonema libertate* and *O. mediraastre*).

(2) Mesopelagic fishes of the families *Myctophidae*, *Bathylagidae*, *Paralepididae*, and *Gonostomatidae*.

(3) Pacific sand lance (*Ammodytes hexapterus*).

(4) Pacific saury (*Cololabis saira*).

(5) Silversides (family *Atherinopsidae*).

(6) Smelts of the family *Osmeridae*.

(7) Pelagic squids (families: *Cranchiidae*, *Gonatidae*, *Histioteuthidae*, *Octopoteuthidae*, *Ommastrephidae* except Humboldt squid [*Dosidicus gigas*], *Onychoteuthidae*, and *Thysanoteuthidae*).

(b) *Directed commercial fishing for Shared EC Species.* For the purposes of this section, "directed commercial fishing" means that a fishing vessel lands Shared EC Species without

landing any species other than Shared EC Species, or lands Shared EC Species with other species and in amounts more than:

- (1) 10 mt combined weight of all Shared EC Species from any fishing trip; or
- (2) 30 mt combined weight of all Shared EC Species in any calendar year.

§ 660.6 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, and the other prohibitions specified in this part, it is unlawful for any person to:

(a) *Directed commercial fishing.* Engage in directed commercial fishing for Shared EC Species from a vessel engaged in commercial fishing within the EEZ off Washington, Oregon, or California. This prohibition does not apply to:

- (1) Fishing authorized by the Hoh, Makah, or Quileute Indian Tribes, or by the Quinault Indian Nation, or
- (2) Fishing trips conducted entirely within state marine waters.

(b) *At-sea processing.* At-sea processing of Shared EC Species is prohibited within the EEZ, except while processing groundfish in accordance with subpart D of this part.

4. In § 660.112, add paragraphs (d)(16) and (e)(10) to read as follows:

§ 660.112 Trawl fishery -- prohibitions.

* * * * *

(d) * * *

(16) Retain and process more than 1 mt of Shared EC Species other than squid species in any calendar year; or, retain and process more than 40 mt of any Shared EC squid species in any calendar year.

(e) * * *

(10) Retain and process more than 1 mt of Shared EC Species other than squid species in any calendar year; or, retain and process more than 40 mt of any Shared EC squid species in any calendar year.

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