



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Director's Office  
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*EDMUND G. BROWN JR., Governor*  
*CHARLTON H. BONHAM, Director*



March 30, 2017

The Honorable Mike McGuire  
Chairman, Joint Committee on Fisheries and Aquaculture  
State Capitol, Room 4146  
Sacramento, CA 95814

Dear Senator McGuire:

Enclosed is a summary report of the regulatory action to be taken to bring State regulations affecting designated forage fish into conformance with the current federal Salmon, Groundfish, Highly Migratory Species, and Coastal Pelagic Species Fishery Management Plans of the Pacific Fishery Management Council. New federal regulations became effective on May 4, 2016. The new state regulations should be adopted during April 2017.

This transmittal fulfills the Department's reporting requirement to the Legislature pursuant to sections 7652.1 and 7652.3 of the Fish and Game Code.

If you have any questions or need additional information, please contact Ms. Deb Wilson-Vandenberg in the Department's Marine Region by telephone at (831) 649-2892, or via e-mail at [Deb.Wilson-Vandenberg@wildlife.ca.gov](mailto:Deb.Wilson-Vandenberg@wildlife.ca.gov).

Sincerely,

Charlton H. Bonham  
Director

Enclosure

cc: The Honorable Robert Hertzberg, Chairman  
Senate Committee on Natural Resources and Water  
State Capitol, Room 5046  
Sacramento, CA 95814

The Honorable Eduardo Garcia, Chairman  
Assembly Water, Parks and Wildlife Committee  
Legislative Office Bldg.  
1020 N Street, Room 160  
Sacramento, CA 95814

**Adoption of a State Regulation to Protect Designated  
Forage Fish Species  
In California Marine Waters**

**California Department of Fish and Wildlife Action Under  
Fish and Game Code Section 7652**

**February 2017**



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## Section 1

### ***California Fish and Game Code 7652 – Authority to Adopt***

*Upon the preparation by the council, and the recommendation by the council to the secretary, of a fishery management plan or amendment thereto pursuant to the act, or upon the approval by the secretary of a fishery management plan, or amendment thereto, pursuant to the act, the director may do the following to conform state law or regulations of the commission to the fishery management plan, or amendment thereto, if the director finds that the action is necessary to achieve optimum yield in California and that it is necessary to avoid a substantial and adverse effect on the plan by that state law or the regulations in order to continue state jurisdiction pursuant to Section 1856 of the act:*

*(a) Adopt regulations that would make inoperative any statute or regulation of the commission, including, but not limited to, statutes or regulations regulating bag limits, methods of taking, and seasons for taking of fish for commercial purposes.*

*Any regulation adopted by the director pursuant to this subdivision shall specify the particular statute or regulation of the commission to be inoperative.*

*(b) Adopt regulations governing phases of the taking of fish for commercial purposes that are not presently regulated by statute or regulation of the commission.*

*(c) Adopt regulations governing phases of the taking of fish for commercial purposes that are presently regulated by statute or regulation of the commission, but only if the statutes or regulations are first made inoperative pursuant to subdivision (a) for the effective period of the regulations adopted by the director pursuant to this subdivision.*

*(d) Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code does not apply to this article.*

## 1A. State Regulatory Language Being Adopted

### Section 111. Designated Forage Fish Species or Species Groups (Federal Shared Ecosystem Component Species).

(a) General Provisions. The intent of this section is to conform regulations for California state waters to federal regulations established in Title 50, Code of Federal Regulations, Parts 600 and 660, 81 Fed. Reg. 19054-19058 (April 4, 2016). In order to prevent development of new large-scale directed commercial fisheries for designated forage fish species (otherwise known as Federal Shared Ecosystem Component Species), except as provided in a federal exempted fishing permit (EFP) issued pursuant to Title 50 Code of Federal Regulations Part 600.745, it is unlawful for any person to engage in directed commercial fishing for designated forage fish species or species groups from a vessel, as defined in (b)(2) below. No person shall take designated forage fish species while engaged in commercial fishing activities except as authorized in (b)(2) below, and as otherwise specified by the Fish and Game Code and regulations provided herein.

(b) General Definitions.

(1) *Designated forage fish species or species groups, otherwise known as Federal Shared Ecosystem Component Species.* The following species or species groups constitute designated forage fish:

(A) Round herring (*Etrumeus teres*) and Thread herring (*Ophisthonema libertate* and *O. medirastre*),

(B) Mesopelagic fishes of the families Myctophidae, Bathylagidae, Paralepididae, and Gonostomatidae,

(C) Pacific sand lance (*Ammodytes hexapterus*)

(D) Pacific saury (*Cololabis saira*)

(E) Silversides (family Atherinopsidae),

(F) Smelts of the family Osmeridae,

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

(2) *Directed commercial fishing.* For the purposes of this section, "directed commercial fishing" means that a fishing vessel lands designated forage fish species or species groups without landing any species other than designated forage fish species or species groups, or lands designated forage fish species or species groups with other species and in amounts more than:

(A) 10 metric tons combined weight of all designated forage fish species or species groups from any fishing trip; or

(B) 30 metric tons combined weight of all designated forage fish species or species groups in any calendar year.

#### NOTE:

Authority cited: Section 7652 Fish and Game Code. Reference: Sections 7650, 7652, 7652.1, 7652.2, 7652.3, and 7653, Fish and Game Code; and Title 50, Code of Federal Regulations, Parts 600 and 660, 81 Fed. Reg. 19054-19058 (April 4, 2016).

## **1B. Forage Fish Regulations Excluded from Conformance Pertaining to Trawling for Pacific Whiting**

The new state regulations being adopted in Title 14, Section 111, California Code of Regulations (CCR) will conform to recently implemented federal regulations that protect unmanaged forage species. The state regulations being adopted will apply to state waters which are generally between zero and three miles offshore.

As part of this action, the Director of the California Department of Fish and Wildlife has elected to exclude state conformance language for one section of the new federal regulations that pertain specifically to the groundfish trawl fishery for Pacific whiting and at-sea processing (see federal language below) – due to the lack of relevance or need in state waters. Because trawling for groundfish is not allowed in state waters per Fish and Game Code Section 8841(h), it is unnecessary and erroneous to add further prohibitive regulations.

The newly implemented federal regulations include: defining the list of forage species, defining "directed commercial fishing", and prohibiting directed fishing for these species within the U.S. West Coast Exclusive Economic Zone (EEZ) which occurs from three to 200 miles offshore. The federal regulations are also intended to "*prohibit at-sea processing of Shared EC Species, except while otherwise lawfully processing groundfish in accordance with 50 Code of Federal Regulations (CFR) part 600, subpart D.*"

The section(s) of federal regulations that will not be included in this state regulatory action are:

### 50 Code of Federal Regulations, Part 660, Subpart B:

#### § 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) ...

(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.*

#### § 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.*

## Section 2

### **California Fish and Game Code 7652.1-7652.2 – Public Hearing Notice; Notices; Taking evidence**

7652.1 (a) Notwithstanding any other section of this article or any other provisions of law, the director shall hold a public hearing or hearings in the area of the fishery under consideration after a recommendation by the council to the secretary of a fishery management plan or amendment thereto pursuant to the act, or after approval by the secretary of a fishery management plan or amendment thereto pursuant to the act. If the secretary approves a fishery management plan or amendment thereto which is substantially identical to the fishery management plan or amendment thereto which has been recommended by the council and the director has held a public hearing on the council's recommended fishery management plan or amendment thereto, the director is not required to hold a second public hearing under this section after the approval by the secretary.

(b) The hearing shall be held not less than four days after the recommendation by the council to the secretary of a fishery management plan or amendment thereto or after the approval by the secretary of a fishery management plan or amendment thereto. The Director shall arrange the time and place of the hearing, shall provide adequate public notice and adequate notice to the appropriate standing policy committee of each house of the Legislature and to the joint committee, and shall convene the hearing at the time and place arranged.

(c) At the hearing or hearings, the director shall take evidence of the effects any proposed regulation would have on the state's fishery resources, the commercial or recreational fishing industry, and the state's ability to manage fishery resources in state waters.

(d) After the hearings, the director shall submit a written report to the Legislature which summarizes the reasons for the proposed regulation.

7652.2. (a) The director may repeal or amend any regulation adopted pursuant to Section 7652 or any other regulation to conform the regulation to federal regulations pursuant to the act, if the director finds that this action is necessary to achieve optimum yield in California.

(b) Notwithstanding any other section of this article or any other provision of law, the director shall hold a public hearing or hearings in the area of the fishery under consideration before the director repeals or amends any regulation pursuant to this section. The director shall arrange the time and place of the hearing, shall provide adequate public notice and adequate notice to the appropriate standing policy committee of each house of the Legislature and to the joint committee, and shall convene the hearing at the time and place arranged.

(c) At the hearing or hearings, the director shall take evidence of the effects the proposed repeal or amendment would have on the state's fishery resources, the commercial or recreational fishing industry, and the state's ability to manage fishery resources in state waters.

(d) After the hearings, the director shall submit a written report to the Legislature which summarizes the reasons for the proposed repeal or amendment.

## **2A. California Department of Fish and Wildlife Press Release Notice**

California Department of Fish and Wildlife News Release

Oct. 3, 2016

Media Contacts:

Carrie Wilson, CDFW Communications, (831) 649-7191

Andrew Hughan, CDFW Communications, (916) 322-8944

Caroline McKnight, CDFW Marine Region, (831) 649-7192

### **CDFW to Host Public Hearing on New Regulations for Unmanaged Forage Fish**

The California Department of Fish and Wildlife (CDFW) will hold a public hearing on new state regulations that will prohibit directed commercial fishing for designated forage fish species within California's marine waters. The meeting will be held on Monday, Oct. 17, from 10 to 11:30 a.m. at the CDFW Marine Region Office, 20 Lower Ragsdale Dr., Suite 100, Monterey (93940).

Under the authority of CDFW Director Charlton H. Bonham, the new state regulations will conform to federal regulations that became effective on May 4, 2016. The federal regulations establish the list of included species, define directed commercial fishing and set vessel-based catch limits for incidental take of forage species within existing commercial fisheries.

Species affected by these regulations include round and thread herring, eulachon (also called candlefish), lanternfish, pelagic squids and some smelts. For a full description of the regulations and a complete list of all included species, please visit the Federal Register website at <https://goo.gl/a7VPsh>.

The federal regulations were developed for federal waters in partnership with CDFW through the Pacific Fishery Management Council process. They were designed to prohibit the formation of any new directed commercial fisheries for the designated forage species, but not affect existing federal commercial activities. Fisheries managed within state waters were considered in the development process so that conforming state regulations would not adversely affect commercial activities in state waters that also encounter these forage species. The state regulations are expected to become effective on Jan. 1, 2017.

Prohibiting new commercial fisheries for these forage species is a proactive measure to protect the food source of many important recreational and commercial species, as well as large marine predators including migratory fishes, sea birds and marine mammals.

For a full description of the draft state regulatory language, please visit the CDFW website at [www.wildlife.ca.gov/notices/regulations](http://www.wildlife.ca.gov/notices/regulations).

WEBLINK: <https://cdfqnews.wordpress.com/2016/10/03/cdfw-to-host-public-hearing-on-new-regulations-for-unmanaged-forage-fish/>



## 2B. Notification of Hearing to Legislature and Joint Committee

**From:** Oltmann, Julie@Wildlife  
**Sent:** Tuesday, October 04, 2016 9:54 AM  
**To:** Katharine Moore; William Craven; [ryan.ojakian@asm.ca.gov](mailto:ryan.ojakian@asm.ca.gov); Weseloh, Tom  
([Tom.Weseloh@sen.ca.gov](mailto:Tom.Weseloh@sen.ca.gov))  
**Cc:** Barrow, Scott@Wildlife  
**Subject:** Notice of fishery management conforming action

This is announcing an upcoming public hearing the Department is holding to consider the adoption of conforming regulations to comport with federal regulations pursuant to Fish and Game Code Section 7652 -7653, relating to forage fishery management.

<https://cdfgnews.wordpress.com/2016/10/03/cdfw-to-host-public-hearing-on-new-regulations-for-unmanaged-forage-fish/>

Please let me know if you have any questions.

Julie Oltmann  
CDFW Legislative Representative  
(916) 653-9772  
[Julie.oltmann@wildlife.ca.gov](mailto:Julie.oltmann@wildlife.ca.gov)

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Every Californian should conserve water. Find out how at:



[SaveOurWater.com](http://SaveOurWater.com) · [Drought.CA.gov](http://Drought.CA.gov)

**Adopt State Regulations to Protect Shared Ecosystem Component Species (Designated Forage Fish)**



J. Hardinn/NOAA-SWFSC


**Public Conformance Hearing**  
October 17, 2016  
Monterey

Deb Wilson-Vandenberg & Caroline McKnight




**Terminology**

- Shared Ecosystem Component Species =
- Shared EC Species =
- Unmanaged Forage Fish Species =
- Designated Forage Fish Species =
- Forage Fish



**State Regulatory Action**


Adopt state regulations that conform to existing federal regulations to prohibit new directed commercial fishing for designated forage fish species within CA state waters



**State Process**  
California Fish and Game Code

F&G Code Section 7652 – Provides the CDFW Director authority to conform to federal regulations specific to Federal Fishery Management Plans


- Public Hearing
- File the regulatory language with Office of Administrative Law
- Formal Report to the Legislature
- Proposed Effective Date – January 1, 2017





**Public Hearing Purpose**

Take evidence on the effects the proposed regulations to protect unmanaged forage fish would have on:



- The state's fishery resources
- The commercial or recreational fishing industry
- The state's ability to manage fishery resources in state waters



**Background on Federal Process**






- Pacific Fishery Management Council
- National Marine Fisheries Service
- Federal Fishery Management Plans
  - Groundfish
  - Salmon
  - Highly Migratory Species
  - Coastal Pelagic Species

 **Background on Federal Process** 

Fishery Ecosystem Plan adopted in 2013


- First Initiative: Comprehensive Ecosystem Based Amendment: Protecting Unmanaged Forage Fish Species



 **Federal Process Goals** 

- Protect unmanaged forage fish species
- No impact to existing commercial fisheries managed through Federal Management Plans – incidental take OK
- Prohibit the development of new directed commercial fisheries on forage fish until adequate information is known


**Shared Ecosystem Component Species (a.k.a Designated Forage Fish)**

- Round and Thread herring
- Mesopelagic fishes (Mycophids or lanternfish)
- Osmerid ("true") smelts
- Pacific sand lance
- Silversides
- Pacific saury
- Pelagic squids (not Humboldt squid)



 **Federal Process Federal Language** 

- Defined the "Shared Ecosystem Component Species"
- Defined "directed commercial fishing" as any vessel landing Shared EC species without landing any other species (other than Shared EC species) in amounts more than:
  - 10 mt combined weight of all EC species in a trip
  - 30 mt combine weight of all EC species in a calendar year

 **Federal Process National Marine Fisheries Service**

- Amend all four Federal Fishery Management Plans to designate "Shared Ecosystem Component Species"
- Federal Rule Effective May 4, 2016

**Proposed State Regulatory Language**

Section 111. Designated Forage Fish Species in Various Ocean Areas Subject to Federal Management (California Code of Regulations, Title 15, Division 100, Part 100.100)

(a) Purpose and Scope. The purpose of this section is to establish a list of designated forage fish species in various ocean areas subject to federal management. The list shall be subject to periodic review and update. The list shall be subject to periodic review and update. The list shall be subject to periodic review and update.

(b) Definitions. The following definitions shall apply to this section:

(1) "Designated forage fish species" means any species of fish that is included on the list of designated forage fish species.

(2) "Directed commercial fishing" means any fishing activity that results in the landing of designated forage fish species in amounts greater than the limits specified in this section.

(3) "Incidental take" means the taking of designated forage fish species as a result of fishing for other species.

(4) "Management plan" means a plan that is approved by the National Marine Fisheries Service for the management of a fishery.

(5) "Trip" means a single voyage of a fishing vessel.

(6) "Vessel" means any motorized vessel used for fishing.

(7) "Weight" means the weight of a fish, measured in metric tons.


(8) "Year" means the calendar year.

(9) "mt" means metric tons.

(10) "California" means the State of California.


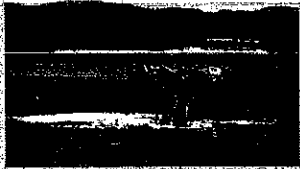
(11) "California Code of Regulations" means the California Code of Regulations, Title 15, Division 100, Part 100.100.

(12) "California Fish and Game Code" means the California Fish and Game Code, Sections 11100, 11101, 11102, 11103, 11104, 11105, 11106, 11107, 11108, 11109, 11110, 11111, 11112, 11113, 11114, 11115, 11116, 11117, 11118, 11119, 11120, 11121, 11122, 11123, 11124, 11125, 11126, 11127, 11128, 11129, 11130, 11131, 11132, 11133, 11134, 11135, 11136, 11137, 11138, 11139, 11140, 11141, 11142, 11143, 11144, 11145, 11146, 11147, 11148, 11149, 11150, 11151, 11152, 11153, 11154, 11155, 11156, 11157, 11158, 11159, 11160, 11161, 11162, 11163, 11164, 11165, 11166, 11167, 11168, 11169, 11170, 11171, 11172, 11173, 11174, 11175, 11176, 11177, 11178, 11179, 11180, 11181, 11182, 11183, 11184, 11185, 11186, 11187, 11188, 11189, 11190, 11191, 11192, 11193, 11194, 11195, 11196, 11197, 11198, 11199, 11200.



Comment Opportunity

Please give your written comments to staff



## 2D. Public Hearing Meeting Minutes

### Forage Fish Conformance Public Hearing - October 17, 2016 10 a.m.

#### California Department of Fish and Wildlife Staff Present

Caroline McKnight, Environmental Scientist, Marine Region

Deb Wilson-Vandenberg, Senior Environmental Scientist Supervisor, Marine Region

Morgan Ivens-Duran, Environmental Scientist, Marine Region

Oliviya Wyse, Scientific Aide, Marine Region

Bob Puccinelli, Captain, Law Enforcement Division

#### Public Q&A During Presentation

Q: Is the report to the legislature a stand-alone report on forage fish, or will it be attached to another DFW report?

A: No, it's a standalone report. Intent is to describe why we are doing this; an explanation from the department explaining why we've invoked FGC Section 7652. Not expecting it to be long; largely to review information from today's presentation. Report will refer to FGC forage language, public hearing materials, federal language.

The actual regulatory language is what goes to OAL. At the same time, we send the report to the legislature. What makes this different from a regular rulemaking process is that since it's under the Director's authority, it skips the normal Title 14 FGC process. There's no discussion or adoption hearing in front of the Commission. This action is just adopting what the feds have already done.

Q: Will the report discuss why this was the chosen pathway, rather than going through the FGC?

A: Commission could have undertaken conformance for state waters by going through normal APA process and adopting these regulations. Our thought was that because we are just conforming to federal regulations, it would be faster to take this approach. The process ended up taking a little longer because we wanted to include language regarding the process for EFPs in state waters.

Q: So, anytime you take action under the Director's authority you let the legislature know?

A: Yes, notifying the legislature is a requirement under Section 7652. There were multiple meetings under the Council process where this was on the agenda and opportunities for discussion. Since there was so much discussion under the federal level, including the NMFS comment period, there was not as much of a need to have multiple hearings under the state process.

Q: What is the pathway to consider authorizing a new fishery; it seems that it would be by getting an EFP at the federal level?

A: Yes. The federal EFP process is very lengthy. So, for applicants who are interested in exploring a new fishery, we didn't want to add an additional delay and require them to go through the Commission process as well. Thought was that perhaps in the future, some of these forage fish might become more prevalent in state waters. Without referring to the federal EFP process somewhere in these regulations, we wouldn't be able to allow any new fisheries. Including that language was preemptive; we don't want to entirely prohibit new directed fisheries.

Q: We spent a lot of time thinking through emerging fisheries, how to make that process streamlined. Want to keep universe of potential management action defined.

### Public Comments Following Presentation

#### Geoff Shester, Oceana

I'm here today speaking on behalf of Oceana, Audubon CA, and Earthjustice. We're speaking in support of the proposed regulations. Back in 2009, both the state and feds supported and went through with a prohibition on krill, which was a big policy statement on importance of that forage species. The FGC forage fish policy was adopted unanimously with support of commercial and recreational industry sectors and NGOs. The key elements of the FGC forage fish policy we feel this action represents is a precautionary approach, preventing new or expanded fisheries for forage species until better information is available, and ensuring consistency with federal regulations. We feel this action is in line with those three elements. Since many of these forage species are consumed by multiple fisheries, we believe this will help ensure sustainable fisheries in California. The Council's advisory bodies have already weighed in, so we don't expect there to be substantial impacts on existing fisheries. Adopting these regulations will also help ensure enforceability across federal and state waters. Myctophids are the most abundant vertebrate species on the planet, represent 65 percent of deep sea biomass, and are the most abundant species in mesopelagic zone. Swordfish feed on them in in the deep scattering layer during the day, as do some of the rare whales: Beaked Whale, Cuvier's. Neon flying squid are an important prey species for black footed albatross; inclusion of that species is of particular importance to Audubon. I also want to mention we believe including the EFP language makes a lot of sense in terms of having a defined process moving forward. While only three people are here today, 90 thousand people commented on the federal regulations, which was the largest set of public comments by number for west coast fishery issues. Oceana has done a legal review of these recommendations and found they were simple and straightforward; we don't have any suggested changes. These regulations represent a deliberate approach for management. The State of Oregon is also undergoing conformance with the federal forage fish regulations. Oregon has adopted and approved regulations, with a target implementation of 1 January 2017. WA has already taken this approach for all their fisheries; with CA and OR processes underway would ensure forage fish protection is in effect across the region.

The latest Ecopath model of forage fish biomass in California Current calculates that once the state and federal regulations are in place, 70 percent of the forage fish biomass will be protected. This 70 percent will be from krill and the shared EC species.

The remaining 25-30% of the biomass is already managed under federal FMPs. These numbers speak to magnitude of this action.

Greg Helms, Ocean Conservancy

We are supportive of the action. The federal and the state process has been long and taxing. We know that doing precautionary work and staving off future problems isn't always a high-priority conservation concern, but we also know they will become more important as time goes on. We also know this type of work takes up scarce Department time and resources. It is clear that the federal process, with Advisory Body and Management Team input, has been exhaustive. Participants in the federal process have examined every corner of both existing and future impacts to recreational and commercial fishing and think it is unlikely any will occur. There aren't any recreational fishing community members here, which is a good thing rather than a process defect; it indicates they have given ample time to explore this. I've spoken with fishermen in Santa Barbara who might want to exploit forage species in the future, and while there is the usual amount of reluctance regarding loss of future flexibility, there is also recognition of the EFP process and how the list of authorized fisheries and gear can be changed in the future. Our intent to not entirely change the state's position on welcoming development of new fishing opportunities are welcomed. Regarding the state's ability to manage fisheries, these regulations can contribute by defining a discrete and knowable workload, clearly specifying what falls under the state's management responsibilities. The workload for state fishery managers is ever growing and paired with limited resources. In a small way, this type of forward-looking action helps to constrain future workload increases.

We're expecting and hoping that this is one of many future forays into ecosystem aspects of managing fisheries, including things like the MLMA Update. The process of developing regulations, creating planning documents, determining who has the authority to take which actions—feel this is a first rather than the final exploration. It took us a while to balance priorities with available time, regulatory effort, and to figure out what's needed. This was a useful and illuminating effort to grapple with one piece with what will be an expanding set of ecosystem considerations. Can look at it in terms of state's ability to manage fisheries; the ability to distinguish directed vs non-directed fishing is useful. As we seek to enhance simplicity of how we look at additional changes to FMPs, this experience will be valuable. While we don't necessarily think a tonnage threshold will be universally applicable (e.g. relative to actions limiting bycatch), the process undertaken with forage fish to look at authorities and tools is more broadly applicable. We hope that this process continues to unfold successfully.

Q: Will the final regulations that go into effect be viewable prior to the implementation date?

A: After the proposed language goes to OAL, they are printed in Z register and then go into effect. One of the reasons that this has become such a lengthy process, don't use it very often in the Marine Region; last instance was 15 years ago.

Gilly Lyons, PEW Charitable Trusts

Thanks for the opportunity to talk about the proposed forage fish regulations. We are strongly supportive of the regulations as proposed, and are excited to see them applied

seamlessly over both federal and state jurisdictions. This action will reduce complexity and confusion, and is a common sense path forward for fisheries management across the board. We appreciate the elegant way in which consideration of potential future fishing was folded in via the federal FEP process; it's also similar to how Oregon is taking their conforming action. I want to echo what my esteemed colleagues have said, and believe the proposed regulations will enhance California's ability to manage fisheries in state waters through a predictable and known playing field. This action will also assist by conserving a substantial portion of the forage base that supports other state fisheries. The precautionary approach that's outlined by these regulations will help the Department build leniency into the fisheries it manages, especially in the face of changing ocean conditions, and do so without impacting existing fisheries and hopefully without burdening department resources. I want to personally say thanks to everyone for their amazing work on this, there's been lots of effort over the last several years. It's also nice to see this process, which started in state arena, come full circle after federal process completed.





THE  
**PEW**  
CHARITABLE TRUSTS

111 SW Columbia Street, Suite 200  
Portland, Oregon 97201  
pewtrusts.org

October 17, 2016

Mr. Charlton H. Bonham, Director  
California Department of Fish and Wildlife  
1416 9th Street, 12th Floor  
Sacramento, CA 95814

**Re: Notice of Conformance with Federal Regulation: Designated Forage Fish (Shared Ecosystem Component Species), Section 111, Title 14, CCR**

Dear Director Bonham:

On behalf of The Pew Charitable Trusts (Pew), thank you for the opportunity to provide comments in support of the California Department of Fish and Wildlife's (CDFW) proposed regulations for unmanaged forage fish.<sup>1</sup> We greatly appreciate CDFW's leadership at the Pacific Fishery Management Council to develop federal protections for these forage species in the U.S. Exclusive Economic Zone, and we thank the Department for its work to draft conforming regulations for state-managed marine waters.

As the Department is well aware, forage species are a vital part of the Pacific Ocean's food web, and a key reason the waters off the West Coast are among the most productive in the world. These small, nutrient-rich species serve as the primary food source for a vast array of larger fish and dependent predators, including California's most commercially and recreationally valuable marine species. The California Fish and Game Commission recognized the importance of protecting forage fish when it adopted its forward-looking Forage Species Policy in 2012.<sup>2</sup> The policy calls for management of forage species that "optimizes their ecological, economic and social values; accounts for the benefits rendered by forage species to other species, fisheries, wildlife, and the overall ecosystem; and considers recreational and commercial fishing interests and other economic sectors." CDFW's proposed regulations will help implement the portion of this policy that addresses unmanaged forage species, while ensuring consistency with federal safeguards.

Further, the proposed regulations will enhance California's ability to manage fishery resources in state waters both by providing predictability and by conserving a significant part of the forage base that sustains the state's directed fisheries. The precautionary approach outlined by the proposed regulations will help CDFW continue building resilience in the marine ecosystems it manages, with little impact on existing fisheries.

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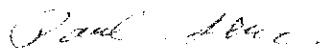
<sup>1</sup> California Department of Fish and Wildlife; Notice of Conformance with Federal Regulation: Designated Forage Fish (Shared Ecosystem Component Species), Section 111, Title 14, CCR (October 3, 2016).

<sup>2</sup> California Fish and Game Commission, Policy on Forage Species, adopted November 7, 2012.

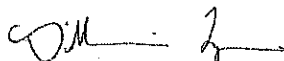
Mr. Charlton H. Bonham, CDFW  
Proposed Designated Forage Fish Regulations  
Page 2 of 2

We strongly support the adoption of the proposed conforming regulations as a means to protect California's unmanaged forage fish resources while also establishing a consistent regulatory approach between state marine waters and adjacent federal waters. We applaud CDFW for its efforts to implement proactive, common-sense measures to safeguard the state's ocean food web. Thank you for your time and consideration of our comments.

Sincerely,



Paul Shively, Project Director  
U.S. Oceans, Pacific  
[pshively@pewtrusts.org](mailto:pshively@pewtrusts.org)



Gilly Lyons, Officer  
U.S. Oceans, Pacific  
[glyons@pewtrusts.org](mailto:glyons@pewtrusts.org)



## Comments & Suggestions

October 17, 2016

RE: Conforming state regulations for unmanaged forage fish

Name: Geoff Shester

Organization: Oceana, Earthjustice, + Audubon California.

We support proposed regulations. They will benefit California's sustainable fisheries & wildlife for future generations, consistent with Commissioner's policy on "Forage Species". Will help move to Ecosystem-based management, consistent with goals of MLMA. Thank you for CDFW support for this action at PFMC and for the work/resources spent on implementing conforming state regulations. Over 90,000 people supported federal regulations.

Comments must be received today: please return to CDFW staff at the hearing



October 17, 2016

### Comments & Suggestions

RE: Conforming state regulations for unmanaged forage fish

Name: Greg Helms

Organization: Ocean Conservancy

1) We believe the federal process was  
exhaustive in demonstrating virtually  
zero recreational & commercial impact.

2) We believe the proposed regulations will  
aid in workload management & required  
ecosystem considerations for management of

Comments must be received today: please return to CDFW staff at the hearing.  
State Fisheries

## SIGN-IN SHEET

NAME	EMAIL & ADDRESS – (OPTIONAL)
1. G. Helms	ghelms@oceanconservancy.org
2. Gilly Lynn	glynns@penbrts.org
3. Geoff Shester	gshester@ocean.org
4.	
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14.	

### Section 3

#### **California Fish and Game Code 7653.3 Report to the Legislature**

*7653. Upon the adoption of any regulations pursuant to Section 7652, the director shall report to the Legislature which statutes or regulations of the commission need to be amended or repealed, and any regulations adopted by the director that need to be enacted as statutes, to conform state law to any fishery management plan, or amendment thereto, that has been approved by the secretary to avoid any substantial and adverse effect on such plan, or its amendments, by such state law.*

### **3A. California Department of Fish and Wildlife Legislature Report on Forage Fish**

#### Introduction

The Director of the California Department of Fish and Wildlife (Department), Charlton H. Bonham, acting under the authority of Fish and Game Code (FGC) Section 7652, will adopt state regulations within California state waters (0-3 miles from shore) to prohibit the development of new directed commercial fishing for designated forage fish species. This action is being taken to conform to existing federal regulations that became effective on May 4, 2016. This action will only add new regulations, and does not require an amendment or repeal of any state regulations, statutes, or existing Fishery Management Plans (FMPs). The state regulatory language was developed by Department staff from the Marine Region and Regulations Unit, and the Office of General Counsel to conform to the intent of the federal language. Following adoption, the regulations are expected to be filed with the Secretary of State.

The Director finds that this action is necessary to achieve optimum yield in California, and is necessary to avoid a substantial and adverse effect on the FMPs by State law or regulation in order to continue State jurisdiction pursuant to Section 1856 of the Magnuson - Stevens Fishery and Conservation Act (P.L. 94-265). This action will achieve the following: define the list of forage species; prohibit new directed (or targeted) commercial fishing on these species; provide an incidental catch allowance for existing commercial fisheries that encounter these forage species, and provide a nexus for acquiring access to future experimental fishing opportunities for forage species to align with federal regulations for waters in the Economic Exclusion Zone (EEZ).

In accordance with FGC Section 7652.2, the Department conducted a public hearing on October 17, 2016 in Monterey to take public comment on any evidence whether the proposed regulatory language to protect forage fish would have any impact on state fishery resources, the commercial or recreational fishing industry, or the state's ability to manage fishery resources in state waters. Representatives from non-government organizations attended the hearing and provided unanimous support for the proposed language. There were no representatives from either the commercial or recreational fishing industry. The presentation materials and written public comment received at the hearing are enclosed in Sections 2D and 2E of this report.

#### Reason and Purpose of Action

The purpose of this action is to provide protection to a specified group of marine species that have been identified as significant contributors to the greater health of the West Coast marine ecosystem. These species provide a food source for larger predators such as fish, marine mammals, and sea birds. Protection of these forage species is expected to help protect stock biomass and achieve optimum yield for many higher trophic level species managed within federal FMPs. While these prey species have not been widely harvested off the coast of California, they have been identified as targeted catch in commercial fisheries in other parts of the world, suggesting they could potentially become active fisheries off the West Coast. This action proactively provides protection for these species that have never been actively managed by state or federal

agencies and are generally lacking in biological information and population estimates for informing management.

#### Federal Process and Action

In 2013, the Pacific Fishery Management Council (PFMC) adopted a Fishery Ecosystem Plan (FEP) with the purpose of developing management actions to coordinate across all federally managed fisheries and waters of the EEZ along the coasts of Washington, Oregon and California. The FEP is structured as a living document and is assessed annually with the goal of "identifying and prioritizing research needs and providing management recommendations to address gaps in ecosystem knowledge". The actions are specifically intended to be comprehensive ecosystem-based decisions that are part of and benefit the marine species that utilize the California Current Ecosystem (CCE). The CCE is a dynamic coastal current along the west coast that supports a highly diverse and productive marine environment including those marine species managed in federal and state FMPs.

In 2014, the PFMC commenced the first ecosystem initiative process which ultimately resulted in changes to all four federal FMPs and was known as the Comprehensive Ecosystem Based Amendment 1 (CEBA 1): Protecting Unfished and Unmanaged Forage Fish Species. The purpose of developing CEBA 1 was to prohibit new directed commercial fishing in Federal waters on unmanaged, unfished forage fish species until the PFMC had 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 species were chosen as those that have broad population ranges across the West Coast states and for their importance as potential prey to the species managed under the PFMC's Federal FMPs.

While conducted through the PFMC process, the National Marine Fisheries Service (NMFS) was the federal agency responsible for the action to protect forage fish and was subject to all federal standards consistent with the National Environmental Protection Act. Through a rigorous review process, an Environmental Assessment document was generated (see Appendix A of this report) and concluded that the forage fish action would not have a significant impact on the environment.

The federal action was specifically not intended to supersede tribal or state fishery management in an effort to give each state the opportunity to adopt state regulations appropriate to its existing statutes and mandates. In preparation for taking conforming action, the Department utilized the federal process to thoroughly analyze current and past state-managed fisheries and incidental allowance amounts to minimize any future impacts within ongoing activities in state waters.

The joint PFMC/NMFS process took more than three years on fishery analysis and development of the proposed action, a range of alternatives, and potential impacts. The full process included more than six public meeting opportunities and discussions with advisory teams, stakeholders, and interested members of the public. During that time, the PFMC documented more than 90,000 public comments in support of the action. The final outcome resulted in the amendment of four federal FMPs and included the list



of species (referred to as Shared Ecosystem Component species), prohibited any new directed (or targeted) commercial fishing for those species, and that existing fisheries managed under the federal FMPs would continue to be allowed to take incidental amounts of forage species within newly established limits. The federal rule was implemented on May 4, 2016 and is included in Appendix B of this report.

The proposed regulatory action seeks to add new state regulations to conform to the new federal regulations implementing CEBA 1, and is consistent with the intent of the PFMCC's FEP.

#### Consistency with California State Statutes and Policies

The Director has determined action can be taken pursuant to Section 7652 of the Fish and Game Code to conform state regulations to federal fishery management plans. The Department has completed the statutory requirements for this conforming action as follows:

- Held a public hearing in the area of the fishery under consideration before the Director repeals or amends any regulation pursuant to Section 7652. Based on the arranged time and place of the hearing, the Department provided adequate public notice and adequate notice to the appropriate standing policy committee of each house of the Legislature and to the joint committee, and held the hearing at the time and place arranged (See Section 2A of this report).
- Submitted this report to the Legislature delivered or placed it in the United States Postal Service addressed to the Chairperson of the Joint Committee on Fisheries and Aquaculture and to the chairperson of the appropriate policy committee of each house of the Legislature.

Additionally, this conformance action preventing the development of commercial fisheries on defined forage species is supported by and consistent with the laws, policies, and plans described below:

#### California Marine Life Management Act – Emerging Fisheries Statute

In 1998, the California Marine Life Management Act (MLMA) was signed into Law by Governor Wilson. The law provided the Department and the California Fish and Game Commission (Commission) more responsibility and authority to manage marine resources. Section 7090 of the Fish and Game Code requires the Commission, based upon the advice and recommendations of the Department, to manage and regulate emerging fisheries. The statute also provides for the adoption of regulations that limit taking in the fishery by means that may include, but not be limited to, restricting landings, time, area, gear, or access. The proposed regulatory action is consistent with the intent of the California Legislature.

#### California Fish and Game Commission – Emerging Fisheries Policy

In 2000, the Commission adopted an Emerging Fisheries Policy that defines criteria the Department would use to determine if a fishery qualifies as emerging pursuant to Fish and Game Code Section 7090. In making this determination, the Director shall consider a number of factors including any evidence that the existing regulations are not

sufficient to insure a stable, sustainable fishery. Although the Department did not make a determination that the select forage species were emerging fisheries off California, the federal environmental analysis describes the need to regulate take of these unmanaged forage species in federal waters to ensure adequate forage for existing federal fishery stocks and other marine species, recognizing these fisheries exist elsewhere in the world.

The proposed regulatory action is consistent with the intent of the Commission's Emerging Fisheries Policy.

*California Fish and Game Commission - Forage Species Policy*

In 2012, the Commission adopted a Forage Species Policy that outlined the need to provide adequate protection for forage species through specific management goals that:

- Are precautionary and utilize the best available science in management decisions using clear and transparent methods;
- Identify and progressively incorporate Essential Fishery Information (EFI) needed for ecosystem-based management of forage species, including physical factors, oceanographic conditions, the effects of fishing on forage species' dependent predators, the availability of alternative prey, spatiotemporal foraging hotspots for predators, and existing management, including marine protected areas;
- Prevent the development of new or expanded forage fisheries until EFI is available and applied to ensure the sustainability of target forage species and protection of its benefits as prey; and
- Facilitate consistency in the management of forage species; integrate with existing FMPs, and encourage cooperation and collaboration across jurisdictions and international boundaries in managing forage species.

The proposed regulatory action is consistent with the intent of the Commission's Forage Species Policy.

Summary

Under the authority of FGC Section 7652, the Department has determined that state conformance for forage species subject to this action are supportive of the goals and mandates outlined by the MLMA, the Commission Emerging Fisheries Policy, the Commission Forage Policy, and the PFMC FEP process. As a result of these established policies and goals that correspond to the proposed action, and the extensive public vetting process through the PFMC, the Director recommends this action be accepted.

## Appendix A: Federal Regulations

### 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 Start Printed Page 19055 assessment and final regulatory flexibility analysis for this action may be obtained from the West Coast Regional Office Web site at <http://www.westcoast.fisheries.noaa.gov/fisheries/ecosystem/index.html>.

### FOR FURTHER INFORMATION CONTACT:

Yvonne deReynier, 206-526-6129, [Yvonne.deReynier@noaa.gov](mailto: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 Web site for its September 2015 meeting: [http://www.pcouncil.org/wp-content/uploads/2015/08/D2a\\_SUP\\_NMFS\\_Rpt\\_forage\\_SEPT2015BB.pdf](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. Start Printed Page 19057

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**

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. medirastre*).

(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 Start Printed Page 19058squid [*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.

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(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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