

ECOSYSTEM PLAN DEVELOPMENT TEAM REPORT ON REVISING THE FEDERAL LIST OF FISHERIES AND GEAR AUTHORIZED FOR USE IN THE WEST COAST EEZ

A. Introduction

The Pacific Fishery Management Council adopted its Fishery Ecosystem Plan (FEP) and FEP appendix at its April 2013 meeting in Portland, OR. As a first task following that adoption, the Council asked that the Ecosystem Plan Development Team (EPDT) report back at the June 2013 meeting on potential revisions to the Federal list of fisheries and gear authorized for use in the West Coast Exclusive Economic Zone (EEZ). Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) at Section 305(a), the Secretary of Commerce (via NMFS) is required to maintain a list of all fisheries and fishing gear authorized for use within each EEZ area under Council jurisdiction. No person or vessel is permitted to “employ fishing gear or engage in a fishery not included on such list without giving 90 days advance written notice to the appropriate Council...” The list of fisheries essentially prohibits anyone from developing a new fishery without first providing a review opportunity to the appropriate Council. Fisheries not on the list are not prohibited altogether, but Councils may use the 90-day period to comment on, develop a regulatory plan for, or recommend that NMFS prohibit the proposed fishery as appropriate.

Federal regulations at 50 CFR 600.725(v) provide the list of fisheries and gear authorized for use within the U.S. EEZ within a long table, separated by geographic areas under the jurisdictions of different fishery management councils. Fisheries authorized for the U.S. West Coast EEZ are found in Section VI of that table, which is notably out of date and inaccurate for most Council-managed fisheries. Appendix A to the FEP, at Section A.1.2.1, discusses the process by which the Council will develop recommendations to NMFS to update the federal list of authorized West Coast EEZ fisheries and gear at 50 CFR 600.725(v):

The Council’s intent is that the updated list identify authorized fisheries and gear in the “most specific and narrow terms possible” (Final Council Action at G.I.d, June 2012). To develop Council recommendations on revisions to that list, the Council should send out a set of proposed amendments to the current list for review by the states and tribes, its advisory bodies and the public. Once the Council has received comments on its proposed amendments and recommendations for any revisions, the Council may finalize its recommended changes to the list of authorized fisheries and gear. The Council may then transmit those recommendations, along with any accompanying analyses, to NMFS, requesting publication of a proposed rule to implement the recommendations. NMFS would then publish the proposed rule and, after an appropriate public comment period, determine whether to approve, disapprove, or partially approve a final rule implementing the Council’s recommendations.

The Council also provided direction on this issue at its June 2012 meeting, under agenda item G.1.:

- A. Regarding the List of Fisheries, all Council advisory bodies shall be tasked with identifying fisheries and authorized gears for Federal fisheries operating in the U.S. EEZ off each state in the most specific and narrow terms possible, for incorporation into the updated List. This exercise shall be completed by the advisory bodies and provided to the EPDT as soon as possible after completion of the FEP.
- B. For state-managed fisheries, the states shall be responsible, through their EPDT representatives, for preparing the list of state-managed fisheries which have a nexus with Federal waters, for inclusion in the updated List.
- C. The EPDT's report shall include any analysis on the possible effectiveness of the List's application process in meeting the goal of preventing development of non-existent fisheries.
- D. The report shall also include, to the extent possible, any new information or analysis regarding the application of 50 CFR 600.747 of the Federal rules, including whether there is a possibility of amending these regulations for the West Coast such that additional requirements and specifications regarding the Council's review of applications could be formally incorporated into Federal regulations.
- E. Regarding the Council's standards which would be used in assessing whether a proposed new fishery could compromise conservation and management measures within the West Coast EEZ, the EPDT report shall provide full detail of the proposed standards and process, in order to make the procedural and content requirements clear and transparent to both applicants and the public.
- F. As soon as possible after completion of the FEP and upon receipt of the report, the Council shall review and provide guidance so that the standards (for assessing new fisheries) can be finalized for incorporation into the FEP.

Each of these Council directions from June 2012 is addressed below, except for Direction D. Under Direction D, the Council had asked whether Federal regulations at 50 CFR 600.747, which apply to all U.S. fisheries generally, could be modified so that more restrictive measures could be implemented just for the U.S. West Coast EEZ. Federal regulations at 50 CFR 600.5 provide the purpose of and scope for the suite of regulations at 50 CFR 600, which is to govern the operations of all fishery management councils and the broad responsibilities of the Councils and the Secretary under the MSA. Unless the MSA itself provides geographically-specific direction, the regulations at 50 CFR 600, including §600.747, are intended to apply throughout all U.S. EEZ areas.

***B. Potential Revisions to the West Coast EEZ List of Authorized Fisheries and Gear
(Council Directions A & B from June 2012 G.1.d. Supplemental REVISED Final Council
Action)***

In response to the Council's June 2012 G.1.d. directions A and B, the EPDT proposes potential revisions to the Federal list of authorized fisheries and gear for the U.S. West Coast EEZ, below, for review and consideration by the Council, its advisory bodies, and the public. Proposed revisions were based on Council direction for this task to:

- take into account changes in both federal and state fisheries management programs that have occurred since the list was first set in place in 1996;
- constrain the list of authorized fisheries and gear to those that currently occur within the EEZ, rather than leaving the list as open as possible.

Table 1 of this report provides the existing list of authorized fisheries and gear found in federal regulations. Following Table 1, we suggest changes to each section of that table and the rationale for those suggestions. Table 2 of this report shows the list of authorized fisheries and gear for the U.S. West Coast EEZ as it would look if the EPDT suggestions were implemented. In both tables, the term “Non-FMP” means that the species or species groups listed are not managed under a federal FMP. Some species referred to in these tables as “Non-FMP” may be managed under state fishery management plans, but they are still considered “Non-FMP” within federal regulations.

As the Council considers which fisheries and gear to retain on or remove from the list, it should bear in mind that removing a fishery from the list does not prohibit that fishery from ever occurring again in the future. Rather, it requires that anyone interested in developing a fishery for a species not on the list notify the Council 90 days in advance of fishing for that species in the EEZ, giving the Council an opportunity to consider regulations for that species and fishery. The larger questions the Council should be asking itself are: “What fisheries do we want to know about before they occur within the EEZ? What types of unfished species might we want to regulate in the future, should fisheries participants express interest in targeting those species?”

Table 1. Authorized West Coast EEZ Fisheries and Gear (Section VI of the table at 50 CFR 600.725(v), last modified on June 24, 1996 [61 FR 32540].)	
Fishery	Authorized gear types
1. Washington, Oregon, and California Salmon Fisheries (FMP):	
A. Salmon set gillnet fishery	A. Gillnet
B. Salmon hook and line fishery	B. Hook and line
C. Trawl fishery	C. Trawl
D. Recreational fishery	D. Rod and reel
2. West Coast Groundfish Fisheries (FMP):	
A. Pacific coast groundfish trawl	A. Trawl
B. Set gillnet fishery	B. Gillnet
C. Groundfish longline and setline fishery	C. Longline
D. Groundfish handline and hook-and-line fishery	D. Handline, hook-and-line
E. Groundfish pot and trap fishery	E. Pot, trap
F. Recreational fishery	F. Rod and reel, handline, spear, hook and line
3. Northern Anchovy Fishery (FMP)	Purse seine, lampara net
4. Angel Shark, White Croaker, California Halibut, White Sea Bass, Pacific Mackerel Large-Mesh Set Net Fishery (Non-FMP)	Gillnet
5. Thresher Shark and Swordfish Drift Gillnet Fishery (Non-FMP)	Gillnet
6. Pacific Shrimp and Prawn Fishery (Non-FMP):	

Table 1. Authorized West Coast EEZ Fisheries and Gear (Section VI of the table at 50 CFR 600.725(v), last modified on June 24, 1996 [61 FR 32540].)	
Fishery	Authorized gear types
A. Pot and trap fishery	A. Pot, trap
B. Trawl fishery	B. Trawl
7. Lobster and Rock Crab Pot and Trap Fishery (Non-FMP)	Pot, trap
8. Pacific Halibut Fishery (Non-FMP):	
A. Longline and setline fishery	Longline
B. Hook-and-line fishery	Hook and line
9. California Halibut Trawl and Trammel Net Fishery	Trawl, trammel net
10. Shark and Bonito Longline and Setline Fishery (Non-FMP)	Longline
11. Dungeness Crab Pot and Trap Fishery (Non-FMP)	Pot, trap
12. Hagfish Pot and Trap Fishery (Non-FMP)	Pot, trap
13. Pacific Albacore and Other Tuna Hook-and-line Fishery (Non-FMP)	Hook and line
14. Pacific Swordfish Harpoon Fishery (Non-FMP)	Harpoon
15. Pacific Scallop Dredge Fishery (Non-FMP)	Dredge
16. Pacific Yellowfin, Skipjack Tuna, Purse Seine Fishery (Non-FMP)	Purse seine
17. Market Squid Fishery (Non-FMP)	Purse seine, dip net
18. Pacific Sardine, Pacific Mackerel, Pacific Saury, Pacific Bonito, and Jack Mackerel Purse Seine Fishery (Non-FMP)	Purse seine
19. Finfish and Shellfish Live Trap, Hook-and-line, and Handline Fishery (Non-FMP)	Trap, handline, hook and line
20. Recreational Fishery (Non-FMP)	Spear, trap, handline, pot, hook and line, rod and reel, hand harvest
21. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear

The biggest challenges in defining the gears used in existing fisheries were: how to address allowable gears for fisheries where retention of a species is only allowed for particular gears when those gears take the species in question as bycatch, and allowing for differences between state laws and regulations affecting non-federal fisheries. The list of authorized fisheries and gear is intended to acknowledge existing fisheries and to require notification when new fisheries begin. Table 2 provides the gears authorized for *targeting* the species referenced. Federal and state laws allowing or requiring retention of bycatch species are not affected or modified by the list of authorized fisheries and gear. For example, Pacific halibut may only be targeted in the commercial fisheries with hook and line gear, while its interception in the groundfish trawl fishery must be monitored under the Individual Bycatch Quota program. In Table 2, hook and line gear is listed as the allowable gear for Pacific halibut fishery participants and trawl is one of the allowable gears for groundfish fishery participants. When a vessel is using the legal gear for the fishery it is participating in, it is subject to all of the regulations that apply to that fishery, including bycatch regulations. A vessel that has bycatch on board, in keeping with the regulations for its fishery, is not starting a new fishery and would be considered in compliance with the list of authorized fisheries and gear.

To address differences among state authorities, Table 2 separates some gear authorizations by latitude lines. We used this approach to indicate what may be authorized by only one or more

states within state waters or for its citizens operating within federal waters. There may be better ways to address differences in how to consider the effects of state management regimes within the EEZ; this approach is intended to respond to the Council's direction to identify fisheries in "the most specific and narrow terms possible." In general, fishing activities in Washington are prohibited unless authorized by rule. Oregon has taken the opposite approach and fishing activities must be explicitly regulated. In California, recreational fisheries are prohibited unless authorized; however, commercial fisheries are allowed unless specifically regulated or prohibited.

In Washington, commercial gears authorized by another state or under one of the Council's FMP may not be allowed under Washington law. For instance, drift gillnet is explicitly prohibited. Gears such as pelagic longline, entangling net, set net, trammel net, and harpoon are not authorized by the state. Commercial fishing activities require a state fishing license. If state regulations specify allowable gear types, then other gears not listed would be unauthorized. Persons under the jurisdiction of Washington should check state rules before participating in or attempting to land fish into the state. In addition, area-specific rules on recreational fishing gears, seasons, and possession limits are described annually in the state's sport fishing rules.

In Oregon, commercial and recreational fisheries for marine finfish and shellfish generally are open unless otherwise restricted or prohibited. For commercial finfish species, the following commercial gears are allowed except as provided for specific fisheries: trawl, pot/trap, longline, seine, handline, hook and line (including vertical), dipnet, and spear. Similarly, for commercial shellfish fisheries, the following gears are allowed except as provided for specific fisheries: longline, pot/trap, dipnet, seine, trawl, spear, hand and hand-powered tools. Set net gear may also be allowed under an experimental gear permit. Oregon commercial fishing licenses and applicable limited-entry permits are required to fish in state waters or to make landings into the state. The following recreational gears are allowed except as provided for specific finfish fisheries: angling (hook and line,) hand, bow and arrow, spear, gaff hook, snag hook and herring jigs. For recreational shellfish, legal gears are specific to each type of shellfish. Persons wishing to fish in state waters or land fish in the state should consult the respective commercial or recreational fishing rules for Oregon.

In California, all fish may be taken at any time or by any gear for commercial purposes unless otherwise restricted or prohibited. Except as provided, California's marine recreational finfish fisheries regulations have a general gear allowance for hook and line or by hand. There are also allowances for most species for spearfishing or use of bow and arrow, which, in some cases, applies to species taken in the EEZ (however, these exceptions do NOT apply to salmon, striped bass, or broadbill swordfish). All invertebrates can only be taken by hand, unless a special exception applies (e.g., mollusks may also be taken by hook and line, squid may be taken with hand held dip nets, crabs may be taken with hoop nets or traps, shrimp may be taken with Hawaiian throw or dip nets.)

In keeping with the lists of fisheries for other fishery management council's at 50 CFR 600.725, Table 2 is divided by species or species groups. When assessing which state-managed species and fisheries to include in the table, the EPDT first asked itself whether the targeted species could be caught in federal waters. Species like razor clams and abalone could safely be left off the table. Species that usually occur in state waters, but which are occasionally caught in the EEZ, like many species of crabs, were kept in the table. Some species in the table, like bonito,

are more frequently caught within the U.S. West Coast during El Niño years, but El Niño years occur often enough that it seemed proper to include such species in the table.

The current list of authorized fisheries and gear allows dredge gear for Pacific scallops (see Table 1,) but that fishery no longer occurs and it does not appear in Table 2. The Council's approach to essential fish habitat over the last 15 years has included area restrictions for and more careful monitoring of the use of bottom-contacting fishing gear, and Table 2 would require future potential users of dredge gear to provide advance notification to the Council. All commercial fisheries that use net gear (trawl, pelagic and demersal seines, gillnet, set net, trammel net, etc.) in the EEZ are explicitly named in Sections 1-17 of Table 2, so that those gears could be eliminated from the general category of commercial gears allowed in the EEZ without advance consultation with the Council. We eliminated those gears from the general category (Section 18 of Table 2) because forage fish species tend to be targeted with those gears in fisheries elsewhere worldwide, and it was concern for the development of future fisheries for lower trophic level species that spurred the Council to consider changes to the list of authorized fisheries and gear. For the recreational fisheries in Table 2, a broad grouping of gears is permitted for use without Council notification in Section 18. The explicitly named recreational fisheries in Sections 1-17 are those that are managed with a more restrictive list of allowable gears than those provided in Section 18.

For all sections of Table 2, general gear terms were used where possible. For example, federal regulations at 50 CFR 600.10 define "hook and line" gear as "one or more hooks attached to one or more lines (can include a troll)." In Table 2, below, where multiple hook and line gear types are allowable, the general term "hook and line" is used, rather than individual terms such as "troll," "vertical hook and line," "pelagic longline," "bottom longline," etc. Similarly, federal regulations provide the same definition for pot and trap gear, and that definition includes both individually deployed traps and longline traps. Therefore, the general term "Pot/trap" is used in Table 2, below, and includes gear that might be defined explicitly as "pot" or "trap" gear under state regulations, as well as those more tightly defined state fisheries gears such as "crab ring." Similarly, state fisheries that use similar net gears are grouped together, even if the fisheries for those species require different mesh sizes in their net gears. Future drafts of this list could use more gear-specific terms if the Council wishes to more tightly constrain gears used in particular fisheries.

The following changes are proposed for the list of fisheries:

1. Group all of the Federal FMP species fisheries at the top of the table, followed by Pacific halibut, which is managed under a Council Catch Sharing Plan. Next, list state-managed fisheries for which landings occur in all three states. Finally, list state-managed fisheries for which landings may occur in only two states or one state. The geographic boundaries in Table 2 refer to areas where catch may be landed.
2. For both the Council's Salmon and Groundfish FMPs: modify those sections of the list to separate commercial from recreational fisheries, ensure that all gears authorized by the FMPs are listed, and re-label the sections with the names of the Council's FMPs ("Pacific Coast Salmon Fisheries" and "Pacific Coast Groundfish Fisheries.")

3. For the Council's Coastal Pelagic Species FMP: add a new section for this FMP, ensure that all gears used by FMP fisheries are listed, and remove all of the old sections of the list that are now redundant because those species are now FMP species (the Northern Anchovy FMP, Pacific mackerel as a species taken in Non-FMP Fisheries, the Non-FMP Market squid fishery, and Pacific sardine and jack mackerel as species taken within a Non-FMP purse seine fishery.) The list has not been amended since the Council's adoption of the Coastal Pelagic Species FMP, which is why the list is so outdated from current management practices. Recreational fisheries for these species would fall under the new Section 18, for all species neither listed nor otherwise prohibited.
4. For the Council's HMS FMP: add a new section for this FMP, ensure that all gears authorized by the FMP are listed, and remove all of the old sections of the list that are now redundant because those species are now FMP species (the Non-FMP Thresher Shark and Swordfish Drift Gillnet Fishery, the Non-FMP Pacific Swordfish Harpoon Fishery, the Non-FMP Pacific Albacore and Other Tuna Hook-and-Line Fishery, and the Non-FMP Pacific Yellowfin, Skipjack Tuna Purse Seine Fishery). The list has not been amended since the Council's adoption of the Highly Migratory Species FMP, which is why the list is so outdated from current management practices.
5. For the Council's Pacific Halibut Catch Sharing Plan: modify this section to separate commercial from recreational fisheries, ensure that gear authorized by the International Pacific Halibut Commission is listed.
6. For state-managed Dungeness crab fisheries: modify this section to separate commercial from recreational fisheries. Provide separate sub-sections for the three state recreational fisheries, which allow different gear types.
7. For state-managed crab fisheries for species other than Dungeness crab: modify this section to separate commercial from recreational fisheries, and recognize that commercial fisheries for crab species other than Dungeness are not authorized off Washington. Provide separate sub-sections for the three state recreational fisheries, which allow different gear types.
8. For state-managed shrimp and prawn fisheries: modify this section to separate commercial from recreational fisheries and to update the allowable gear types. Provide sub-sections for: Washington's commercial trawl-only pink shrimp fishery; Washington and California's commercial pot/trap-only spot prawn fisheries; Oregon's commercial trawl and pot/trap fisheries; California's commercial trawl and pot/trap fisheries for species other than spot prawn; and three separate sections for each of the different state recreational fisheries, which allow different gear types.
9. The section for the coastwide commercial hagfish fishery using pot/trap gear is unchanged from Table 1 to Table 2.
10. Fisheries for squid species other than market squid, which is an FMP species, and for octopus are organized so that: commercial and recreational fisheries are separated and

coastwide commercial gear designations are provided; a sub-section is provided for recreational squid fisheries off Washington and Oregon, which allow the same gear types; a sub-section is provided for recreational octopus fisheries off Washington and Oregon, which allow the same gear types; and a sub-section is provided for recreational fisheries off California, which allow different gear types from the other two states.

11. Fisheries for state-managed white sturgeon fisheries: separate commercial from recreational fisheries and update the allowable gear types. Provide sub-sections for: Oregon’s commercial fisheries, which allows only trawl, pot/trap, hook and line, seine, dip net, and spear; Washington and Oregon’s recreational fisheries, which allow only hook and line; and California’s recreational fishery, which allows only hook and line and spear.
12. The commercial sea cucumber fisheries are added to the table and different gear designations are provided for Oregon and California fisheries.
13. Sections 13-17 in Table 2, below, address fisheries that are authorized by only one state, usually because the species in those sections do not have coastwide ranges: Oregon’s minor finfish commercial fishery (Section 13) Oregon’s authorized (but inactive) weathervane scallop trawl fishery (Section 14); California’s commercial fisheries for California halibut and white seabass (Section 15); California’s commercial drift net fishery for California barracuda, white seabass, and yellowtail (Section 16); and California’s Pacific bonito fisheries (Section 17).
14. Section 18 in Table 2, which provides authorizations for the use of named gears without advance consultation with the Council, is revised from the general gear categories in the current list of authorized fisheries and gear (Sections 20 and 21 of Table 1). In keeping with the Council’s direction to define fisheries “in the most specific and narrow terms possible,” the EPDT’s proposals to specifically identify several fisheries not previously identified eliminates the need for including some gears within Section 20. The EPDT recommends removing Pacific saury from the list of authorized commercial fisheries and gear because there has not been a commercial landing of Pacific saury since at least 1980. Any future Pacific saury landings would likely occur as incidental catch in with fisheries targeting CPS or HMS species.

Based on the modifications suggested above, Table 2 provides potential revisions to the List of Authorized Fisheries and Gear:

Table 2. Proposed revisions to the Federal List of Authorized West Coast EEZ Fisheries and Gear (at 50 CFR 600.725(v), June 2013 EPDT draft.	
Fishery	Authorized gear types
1. Pacific Coast Salmon Fisheries (FMP):	
A. Commercial fisheries – coastwide	Hook and line
B. Recreational Fisheries	Hook and line
2. Pacific Coast Groundfish Fisheries (FMP):	
A. Commercial fisheries	Trawl, hook and line, pot/trap, demersal seine, set net, spear, and hand collection
B. Recreational fisheries	Hook and line, spear

Table 2. Proposed revisions to the Federal List of Authorized West Coast EEZ Fisheries and Gear (at 50 CFR 600.725(v), June 2013 EPDT draft.

Fishery	Authorized gear types
3. Coastal Pelagic Species Fisheries (FMP)	
A. Commercial fisheries	Purse seine, lampara net, brail net, dip net, cast net, hook and line
4. Highly Migratory Species Fisheries (FMP)	
A. Commercial	Hook and line, gillnet, harpoon, purse seine
B. Recreational	Hook and line, spear, harpoon, bow and arrow
5. Pacific Halibut Fisheries (Non-FMP):	
A. Commercial fisheries	Hook and line
B. Recreational fisheries	Hook and line, spear
6. Dungeness Crab Fisheries (Non-FMP)	
A. Commercial	Pot/trap
B. Recreational North of 46°15' N. lat.	Pot/trap, dip net, hand harvest
C. Recreational South of 46°15' N. lat. and North of 42° N. lat.	Pot/trap, hook and line, dip net, hand harvest, rake
D. Recreational South of 42° N. lat.	Pot/trap, hand harvest, hoop net, crab loop
7. Crab Fisheries for Species other than Dungeness crab (Non-FMP)	
A. Commercial Pot/Trap Fisheries South of 46°15' N. lat.	Pot/trap
B. Recreational North of 46°15' N. lat.	Pot/trap, dip net, hand harvest
C. Recreational South of 46°15' N. lat. and North of 42° N. lat.	Pot/trap, hook and line, dip net, hand harvest, rake
D. Recreational South of 42° N. lat.	Pot/trap, hand harvest, hoop net, crap loop
8. Shrimp and Prawn Fisheries (Non-FMP):	
A. Commercial pink shrimp North of 46°15' N. lat.	Trawl
B. Commercial spot prawn North of 46°15' N. lat. and South of 42° N. lat.	Pot/trap
C. Commercial South of 46°15' N. lat. and North of 42° N. lat.	Pot/trap, trawl
D. Commercial South of 42° N. lat. for all species except spot prawn	Pot/trap, trawl
E. Recreational North of 46°15' N. lat.	Pot/trap, dip net, hand harvest
F. Recreational South of 46°15' N. lat. and North of 42° N. lat.	Pot/trap, hook and line, dip net, hand harvest, rake
G. Recreational South of 42° N. lat.	Pot/trap, hand harvest, dip net
9. Hagfish Commercial Fisheries (Non-FMP)	Pot/trap
10. Squid, all spp. except market squid, and Octopus Fisheries (Non-FMP)	
A. Commercial	Hook and line, pot/trap, dip net, seine, trawl, set net, spear, hand harvest
B. Recreational Squid Fisheries North of 42° N. lat.	Hook and line, cast net, dip net, hand harvest
C. Recreational Octopus Fisheries North of 42° N. lat.	Hook and line, pot/trap, dip net, hand harvest
D. Recreational South of 42° N. lat.	Hook and line, dip net, hand harvest
11. White Sturgeon Fisheries (Non-FMP)	
A. Commercial South of 46°15' N. lat. and North of 42° N. lat.	Trawl, pot/trap, hook and line, seine, dip net, spear
B. Recreational North of 42° N. lat.	Hook and line
B. Recreational South of 42° N. lat.	Hook and line, spear
12. Sea Cucumber Fishery (Non-FMP)	
A. Commercial hand harvest fishery South of 46°15' N. lat.	Hand harvest

Table 2. Proposed revisions to the Federal List of Authorized West Coast EEZ Fisheries and Gear (at 50 CFR 600.725(v), June 2013 EPDT draft.	
Fishery	Authorized gear types
B. Commercial trawl fishery South of 42° N. lat.	Trawl
13. Minor Finfish Commercial Fisheries South of 46°15' N. lat. and North of 42° N. lat. for: Non-FMP Shark species, Pacific pomfret, slender sole, wolf-eel, eelpout species, Pacific sandfish, skilfish, and walleye pollock Fisheries (Non-FMP)	Trawl, pot/trap, hook and line, seine, dipnet, spear
14. Weathervane Scallop Commercial Fishery South of 46°15' N. lat. and North of 42° N. lat. (Non-FMP)	Trawl
15. California Halibut and White Seabass Commercial Fisheries South of 42° N. lat. (Non-FMP)	Trawl, hook and line
A. California halibut trawl fishery	Trawl
B. Set net fishery	Gillnet, trammel net
C. Hook and line fishery	Hook and line
16. California Barracuda, White Seabass, and Yellowtail Drift-Net Commercial Fishery South of 42° N. lat. (Non-FMP)	Gillnet
17. Pacific Bonito and Commercial Net Fisheries South of 42° N. lat. (Non-FMP)	Purse seine
18. Finfish and Shellfish Fisheries Not Listed Above and Not Otherwise Prohibited (Non-FMP)	
A. Commercial	Hook and line, pot/trap, spear
B. Recreational	Hook and line, spear, pot/trap, dip net, cast net, hand harvest, rake, harpoon, bow and arrow

C. The Effectiveness of the List in Preventing the Development of Fisheries that Do Not Now Exist (Council Direction C from June 2012 G.1.d. Supplemental REVISED Final Council Action)

In addition to asking that the EPDT develop proposed revisions to the list of authorized fisheries and gear, the Council asked that the EPDT analyze the effectiveness of the List's application process in meeting the goal of preventing development of non-existent fisheries (Direction C). The EPDT has addressed this issue in some of its past reports to the Council, particularly its June 2012 report for Agenda Item G.1. and in Appendix A to the FEP. As discussed in the introduction to this report, the list of authorized fisheries and gear does not prohibit new fisheries altogether. Rather, it requires that persons wishing to develop new fisheries consult with the Council, so that the Council has an opportunity to comment on, develop a regulatory plan for, or recommend that NMFS prohibit the proposed fishery as appropriate.

A person wishing to begin a new fishery that is not listed in 50 CFR 600.725 must first notify the relevant fishery management council or its Director. If the council or its Director receives a complete notification, then "a signed return receipt for the notice serves as adequate evidence of the date that the notification was received by the appropriate Council or the Director, in the case of Atlantic highly migratory species, and establishes the beginning of the 90-day notification period, unless required information in the notification is incomplete" (50 CFR 600.747(c)(2)(i)). Under 50 CFR 600.747(c)(2), the 90-day notification period will be delayed if a complete notification is not received. Complete notification must include:

- (A) Name, address, and telephone number of the person submitting the notification.
- (B) Description of the gear.
- (C) The fishery or fisheries in which the gear is or will be used.
- (D) A diagram and/or photograph of the gear, as well as any specifications and dimensions necessary to define the gear.
- (E) The season(s) in which the gear will be fished.
- (F) The area(s) in which the gear will be fished.
- (G) The anticipated bycatch species associated with the gear, including protected species, such as marine mammals, sea turtles, sea birds, or species listed as endangered or threatened under the ESA.
- (H) How the gear will be deployed and fished, including the portions of the marine environment where the gear will be deployed (surface, midwater, and bottom).

If the notification is complete and the Council finds that the use of the new gear or participation in a new fishery “would not compromise the effectiveness of conservation and management efforts, it shall: (1) Recommend to the [applicable] Regional Administrator that the list [of authorized fisheries and gear] be amended; (2) Provide rationale and supporting analysis, as necessary, for proper consideration of the proposed amendment; and (3) provide a draft proposed rule for notifying the public of the proposed addition with a request for comment” (50 CFR 600.747(c)(3)(B)).

If the notification is complete and the Council finds that “the proposed gear or fishery will be detrimental to conservation and management efforts, it will recommend to the RA [Regional Administrator] that the authorized list of fisheries and gear not be amended, that a proposed rule not be published, give reasons for its recommendation of a disapproval, and may request NMFS to publish emergency or interim regulations, and begin preparation of an FMP or amendment to an FMP, if appropriate” (50 CFR 600.747(c)(3)(C)). After considering the notification and Council's recommendation, “NMFS will decide whether to publish a proposed rule. If information on the new gear or fishery being considered indicates it is likely that it will compromise conservation and management efforts under the Magnuson-Stevens Act, and no additional new information is likely to be gained from a public comment period, then a proposed rule will not be published and NMFS will notify the appropriate Council. In such an instance, NMFS will publish emergency or interim regulations to prohibit or restrict use of the gear or participation in the fishery” (50 CFR 600.747(c)(3)(D)).

In summary, introducing a new fishery to an EEZ is essentially a multi-step decision-making process: the interested party first notifies the Council of an intent to fish and provides supporting evidence for the anticipated effects of the fishery; the Council assesses that evidence and decides whether to support or prevent the initiation of the fishery, and makes recommendations to that effect to NMFS; NMFS assesses the evidence and the Council's recommendations and decides whether to formalize the Council's recommendation via federal regulation. As discussed below, the Council has already taken steps to set standards for a complete notification and to improve the quality of information that must be provided to the Council in order for the Council to best assess whether a new proposed fishery might be detrimental to its fishery conservation and management measures.

D. Standards the Council Would Use in Assessing a Proposed New West Coast EEZ Fishery
(Council Direction E from June 2012 G.I.d. Supplemental REVISED Final Council Action)

Finally, the Council's June 2012 directions to the EPDT included a request that the EPDT report on the standards the Council would use in assessing whether a proposed new fishery could compromise conservation and management measures within the West Coast EEZ (Direction E). The Council adopted standards for assessing proposed new fisheries in April 2013, when it adopted Appendix A to the FEP. Because the Council also left Appendix A open to modification, those standards may be modified through Council action under revisions to the list of authorized fisheries and gear or under action the Council may take under FEP Initiative 1. The following text, excerpted from Appendix A at Section A.1.1, provides the Council's current standards for assessing whether a proposed new EEZ fishery could compromise its conservation and management measures:

A.1.1 Council Policy on the Development of New Fisheries for Unfished Species

Under Title II of the MSA, there is no allowable level of foreign fishing for species currently unfished within the U.S. West Coast Exclusive Economic Zone (EEZ). Fishing vessels and fish processors of the U.S. have the capacity to harvest and process the levels of optimum yield of all species subject to Council FMPs.

U.S. citizens wishing to initiate new fisheries for West Coast EEZ species that are not subject to Council FMPs, nor explicitly permitted by the list of fisheries described in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) at 16 U.S.C. §1855 and in federal regulations at 50 CFR 600.725(v), are urged to approach the Council with an application for an Exempted Fishing Permit (EFP,) accompanied by a science plan for that EFP fishery, describing the data to be collected by the EFP fishery and the likely analyses needed to assess the potential effects of converting the fishery to an FMP fishery over the long-term. EFP fishery data and analyses should, at a minimum, assess: the amount and type of bycatch species associated with the EFP gear, including protected species, such as marine mammals, sea turtles, sea birds, or species listed as endangered or threatened under the Endangered Species Act (ESA); how the gear will be deployed and fished, and its potential effects on EFH, including the portions of the marine environment where the gear will be deployed (surface, midwater, and bottom). The Council and its advisory bodies will review the results of the EFP to assess whether the information provided is adequate to determine the potential effects of the fishery on the Council's conservation and management measures. Depending on the quality of information received, and on the potential effects of the fishery on the Council's conservation and management measures, the Council will either reissue the EFP, or discontinue the EFP and initiate development of an FMP, FMP amendment, or regulatory amendment process to either prohibit the new fishery from the EEZ, or introduce the new fishery to the EEZ.

U.S. citizens wishing to bypass the EFP process to initiate new fisheries for West Coast EEZ species that are not subject to Council FMPs, nor explicitly permitted by the list of fisheries described in the MSA at 16 U.S.C. §1855 and in federal regulations at 50 CFR 600.725, may do so by following the Council notification process described at 50 CFR 600.747. However, that notification is required to be reviewed by the Council and NMFS for the potential effects of new

fisheries on the Council's conservation and management measures for, at a minimum, FMP species, protected species, and for the habitat of managed and protected species. A review conducted in the absence of the scientific data that could be provided by an EFP would be necessarily precautionary.

Whether introduced via the EFP process, or via the notification process at 50 CFR 600.747, the Council would view new fisheries as having the potential to affect its conservation and management measures if those fisheries had an effect on:

- *Any Council-managed species;*
- *Species that are the prey of any: Council-managed species, marine mammal species, seabird species, sea turtle species, or other ESA-listed species;*
- *Habitat that is identified as EFH or otherwise protected within one of the Council's FMPs, critical habitat identified or protected under the ESA, or habitat managed or protected by state or tribal fishery or habitat management programs;*
- *Species that are subject to state or tribal management within 0-3 miles offshore of Washington, Oregon, or California;*
- *Species that migrate beyond the U.S. EEZ.*