

NMFS REGULATORY PLAN FOR IMPLEMENTING COMPREHENSIVE ECOSYSTEM-BASED  
AMENDMENT 1: PROTECTING UNFISHED AND UNMANAGED FORAGE FISH SPECIES

Ecosystem Workgroup Report E.4.a, Attachment 1, describes the Council and NMFS processes for developing and implementing Comprehensive Ecosystem-Based Amendment (CEBA) 1 in Section 1.3. As described in that section, NMFS plans to publish three *Federal Register* notices for CEBA 1:

1st *Federal Register* Notice: NMFS publishes a Notice of Availability for the amendments to the four fishery management plans (FMPs).

2nd *Federal Register* Notice: NMFS publishes Council recommendations as proposed rule to implement CEBA 1.

3rd *Federal Register* Notice: NMFS publishes a final rule to implement CEBA 1 if it partially or fully approves the amendments to the FMPs.

CEBA 1 includes these FMP amendments: Amendment 15 to the coastal pelagic species (CPS) FMP, Amendment 25 to the Groundfish FMP, Amendment 3 to the highly migratory species (HMS) FMP, and Amendment 19 to the Salmon FMP. Although this Council rarely adopts multi-FMP amendments, NMFS has experience working with multi-FMP amendment processes in other fishery management council arenas, including those implementing actions based in a Fishery Ecosystem Plan (FEP).<sup>1</sup>

The Notice of Availability, which is required by the Magnuson-Stevens Fishery Conservation and Management Act (MSA) at 16 U.S.C. 1854, will simply announce that the FMP amendments are available for public review for 60 days. After the 60-day public review and comment period, NMFS has 30 days to approve, disapprove, or partially approve the FMP amendments.

The proposed rule, which is to be published in the *Federal Register* after the publication of the Notice of Availability, includes a preamble that will announce a comment period on the proposed regulations to implement CEBA 1 and will provide some background information on CEBA 1 drawn from the Environmental Assessment at E.4.a. Under the MSA, the comment period on the proposed rule must be 15-60 days in duration. When publishing proposed rules to implement FMP amendments, NMFS prefers to end proposed rule comment periods on the same day as the end of the comment period for the Notice of Availability. Synching the end dates of these comment periods reduces confusion for the public, the Council, and NMFS.

After NMFS has completed its 30-day FMP amendment review period, it will publish the final rule to implement CEBA 1. Regulations to implement CEBA 1 will become effective at least 30 days after the publication of the final rule in the *Federal Register*, in keeping with the Administrative Procedure Act (5 U.S.C. 553).

Nation-wide EEZ fisheries regulations are at Part 600 in Title 50 (Wildlife and Fisheries) of the Code of Federal Regulations, while Part 660 specifically applies to vessels operating in the Exclusive Economic

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<sup>1</sup> For example, Notice of Availability, Proposed Rule, and Final Rule to implement South Atlantic Comprehensive Ecosystem-Based Amendment 2:

<http://www.gpo.gov/fdsys/pkg/FR-2011-09-26/pdf/2011-24677.pdf> (Notice of Availability)

<http://www.gpo.gov/fdsys/pkg/FR-2011-11-08/pdf/2011-28924.pdf> (proposed rule)

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-30/pdf/2011-33300.pdf> (final rule)

Zone (EEZ) off the coasts of Washington, Oregon, and California.<sup>2</sup> Part 660 is divided into subparts: Subpart A for general regulations, Subpart B is temporarily unassigned, Subparts C through G for groundfish fishery regulations, Subpart H for salmon regulations, Subpart I for CPS regulations, Subpart J is temporarily unassigned, and Subpart K for HMS species regulations.

NMFS plans to draft implementing regulations for CEBA 1 that would revise Subparts A and B of Title 50, Part 660. Subpart A would remain available for general descriptions and definitions, but Subpart B would be designated for regulations that affect all EEZ fisheries off the U.S. West Coast. By implementing CEBA 1 in this new section, we can avoid having to revise or conflict with the FMP-specific regulations in the rest of Part 660. If the Council develops additional EEZ-wide regulations in the future, Subpart B should provide a useful home for those regulations.

As an initial stage in the Council's process to develop FEP Initiative 1, the Council and NMFS tightened the Federal list of authorized fisheries and gear for the West Coast EEZ (50 CFR 600.725(v)). Our revisions to that list require, among other things, that any person wanting to develop a new net gear (trawl, seine, etc.) fishery in the EEZ first notify the Council of his/her intent to develop that fishery 90 days in advance of starting fishing. CEBA 1 moves beyond that action to prohibit future fisheries for Shared EC Species. In keeping with the Council's Purpose and Need statement for this action, and with Council direction over the course of its discussions to date, CEBA 1 regulations would:

- Define Shared Ecosystem (EC) Species, as including: round herring, thread herrings, mesopelagic fishes, Pacific sand lance, Pacific saury, silversides, osmerid smelts, and pelagic squids (except Humboldt squid) – see E.4.a., Attachment 1, for detailed list and scientific names.
- Define *directed commercial fishing* for Shared EC Species within the EEZ as a pattern of fishing behavior that could reasonably indicate a directed fishery, such as a vessel having more than one occurrence of its Shared EC Species catch being landed and sold, rather than as a single landings event, or as a single incidental catch event, in keeping with Council direction to ensure that the current low levels of incidental catch of Shared EC Species continue to be allowed.
- Prohibit directed commercial fishing for Shared EC Species within the EEZ unless allowed as part of a Pacific Coast treaty Indian tribe fishery within the applicable usual and accustomed fishing area of the Hoh, Makah, or Quileute Indian Tribe, or the Quinault Indian Nation.

The CEBA 1 regulations would explicitly apply within the EEZ (3-200 nm offshore), and not to any state waters (0-3 nm offshore) fisheries that may occur for any of the species identified as Shared EC Species. NMFS looks forward to working with the states and Council staff on drafting CEBA 1 regulations language.

Federal regulations at 50 CFR 600.745(b) address exempted fishing and exempted fishing permits (EFPs), and while draft Council Operating Procedure 24 provides this Council's specific requirements for applicants interested in a West Coast EFP for Shared EC Species. Because existing Federal regulations already allow NMFS and fishery management councils to consider EFPs for managed species, there is no need to additionally specify in new Federal regulations that EFPs are permissible for Shared EC Species.

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<sup>2</sup> 50 CFR 600, electronic version:

<http://www.ecfr.gov/cgi-bin/text-idx?SID=d4df74e279e945b3b883d6b3d8a4defb&node=pt50.12.600&rgn=div5>

50 CFR 660, electronic version:

<http://www.ecfr.gov/cgi-bin/text-idx?SID=3dfd47d63d9898bc8efcb38a0505334b&node=pt50.13.660&rgn=div5>