

ECOSYSTEM PLAN DEVELOPMENT TEAM REPORT ON AUTHORITIES TO PROTECT
UNFISHED SPECIES FROM FUTURE DIRECTED FISHERIES

In November 2011, and again in April 2012, the Council requested that the Ecosystem Plan Development Team (EPDT) provide the Council with a report describing and analyzing the various possible regulatory authorities or mechanisms available to prohibit fishing for, or otherwise protect unfished species. The EPDT discussed this issue at its April 12, 2012 meeting in Seattle, WA. At that meeting, the EPDT identified eight different options for using authorities to partially or wholly restricting fishing for unfished species. Those authorities may be divided into four major categories:

(A) Existing tools available to the Council – using the Federal List of Authorized Fisheries and Gear

Option 1: Recommend that NMFS Update and Revise the Federal List of Fisheries and Gear permitted within the PFMC management area, the U.S. Exclusive Economic Zone (EEZ) off the coasts of Washington, Oregon, and California

Option 2: Recommend that NMFS Update and Revise the Federal List of Fisheries and Gear permitted within the PFMC management area, the U.S. EEZ off the coasts of Washington, Oregon, and California. **ALSO**, describe in the Fishery Ecosystem Plan (FEP) the standards that the Council would use in assessing whether a proposed new fishery could compromise its conservation and management measures within the West Coast EEZ

(B) Using FMP amendments to add species to fishery management plans (FMPs)

Option 3: Use FMP amendment process to add new fishery management unit (FMU) species to one of the Council's current FMPs

Option 4: Use FMP amendment process to add new ecosystem component (EC) species to one of the Council's current FMPs

Option 5: Use FMP amendment process to identify potential adverse effects on EFH as those that might result in the loss of certain prey of FMP species

(C) Developing a new Ecosystem FMP

Option 6: Shift ongoing FEP development process to an Ecosystem FMP development process.

(D) Authorities available to entities outside of or ancillary to the Council process

Option 7: Consult with the five West Coast National Marine Sanctuaries to assess whether the sanctuaries would consider prohibiting harvest of unfished fish species under National Marine Sanctuary Act authority.

Option 8: Consult with the three West Coast states to assess their willingness to use state processes to: restrict or prohibit fishing for unfished species by state license holders; restrict or prohibit the landings of forage fish into the states, or the processing of landings into certain products (e.g., reduction to fish meal.)

Table 2, at the end of this document, provides the general scope of the Council and NOAA review and regulatory processes needed to implement these options.

(A) EXISTING REGULATORY TOOLS AVAILABLE TO THE COUNCIL TO REGULATE UNFISHED SPECIES

Options 1 and 2 in this section do not require amending an existing FMP, nor do they require the initiation of a new FMP. Both options are available to the Council under its existing authorities.

***Option 1:** Recommend that NMFS Update and Revise the Federal List of Fisheries and Gear permitted within the PFMC management area, the U.S. EEZ off the coasts of Washington, Oregon, and California.*

Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) at §305(a), the Secretary of Commerce (via NMFS) is required to maintain a list of all fisheries and fishing gear under the authority of each Council. 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.

The federal list of allowable fisheries and gear is found in Federal regulations at 50 CFR 600.725(v). The list for the West Coast EEZ has not been amended since 1999 and is fairly liberal, naming not only those fisheries that were in place at the list’s creation, but also providing generally for unspecified recreational fisheries (spear, trap, handline, pot, hook and line, rod and reel, hand harvest gears) and unspecified commercial fisheries (trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear). The list does not in itself regulate any fishery or supersede any other federal, state, or tribal regulations that otherwise prohibit or constrain participation in any of the fisheries on the list.

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.

Option 2: Recommend that NMFS Update and Revise the Federal List of Fisheries and Gear permitted within the PFMC management area, the U.S. EEZ off the coasts of Washington, Oregon, and California. ALSO, describe in the FEP the standards that the Council would use in assessing whether the likelihood that a proposed new fishery could compromise its conservation and management measures within the West Coast EEZ.

Under this option, the Council would recommend that NMFS update and revise the list of fisheries and gear, and would also use the FEP to describe its priorities for reviewing notifications of any new fisheries. This option would provide unfished species with an additional layer of protection by establishing a record of the issues that the Council intends to consider when reviewing a potential new fishery for whether it could compromise the Council's conservation and management measures. This option would also inform potential applicants of the standards and guidelines under which the Council would consider new fisheries. FEP language to limit fisheries expansion should be linked to MSA and regulatory requirements. For example, text similar to the following could be included in the FEP at Chapter 4, *Uncertainties of Environmental and Human-Induced Impacts to the Marine Environment*:

Pursuant to Title II of the MSA, there is no allowable level of foreign fishing for species currently unfished within the U.S. West Coast EEZ. Fishing vessels and fish processors of the U.S. have the capacity to harvest and process up to and beyond the level of optimum yield of all species subject to PFMC FMPs.

U.S. citizens wishing to initiate new fisheries for West Coast EEZ species that are not subject to PFMC 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(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 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 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 or FMP 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 PFMC 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 species or stock listed as threatened or endangered under the Endangered Species Act;
- 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.

Under Options 1 and 2, the list of authorized West Coast EEZ fisheries and gear would be amended and updated through the federal rulemaking process. Table 1 provides the current list of authorized fisheries and gear under 50 CFR 600.725(v) for the U.S. West Coast EEZ, with suggested removals shown in ~~strikeout text~~, and suggested revisions shown in *italic text*.

| Table 1: Authorized West Coast EEZ Fisheries and Gear | |
|--|---|
| Fishery | Authorized gear types |
| 1. Washington, Oregon, and California Salmon Fisheries (FMP): | |
| A. Salmon set gillnet fishery – <i>Commercial fishery</i> | A. Gillnet |
| B. Salmon hook and line fishery – <i>Coastwide</i> | B. <i>Hook and line (**Federal definition for “Hook and line” gear is broad enough to include the array of horizontal and vertical, and stationary and mobile hook and line gear used in West Coast commercial</i> |

| Table 1: Authorized West Coast EEZ Fisheries and Gear | |
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| Fishery | Authorized gear types |
| | and recreational fisheries: “one or more hooks attached to one or more lines (can include a troll.)”) |
| C. Trawl fishery East of Cape Flattery (**Fraser Panel fisheries**) | C. Trawl Gillnet, purse seine, reef net, hook and line |
| D. Recreational fishery | D. Rod and reel Hook and line |
| 2. West Coast Groundfish Fisheries (FMP): | |
| A. Pacific coast groundfish trawl- <i>Commercial fishery</i> | A. Trawl, Hook and line, pot, trap, gillnet |
| 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 Coastal Pelagic Species (FMP) | Purse seine, <i>drum seine</i> , 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 |
| 5. <i>Highly Migratory Species (FMP)</i> | Gillnet, hook and line, troll, harpoon, purse seine |
| 6. Pacific Shrimp and Prawn Fishery (Non-FMP): | |
| 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- <i>Commercial</i> | Longline |
| B. Hook and line fishery- <i>Recreational</i> | 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 |

(B) USING FMP AMENDMENTS TO ADD SPECIES TO FMPs AS FMU OR EC SPECIES, OR AS EFH

Options 3, 4, and 5 all address amending one or more of the Council's FMPs, to be accompanied by the FMP amendment process and analysis required by the MSA and other applicable laws. Although any of these options could be exercised for one of the Council's four FMPs, the Council might also consider a comprehensive amendment, in the style of the South Atlantic and other fishery management councils. The South Atlantic Fishery Management Council (SAFMC) uses its FEP to discuss issues that simultaneously affect species within all or several of its FMPs, and then develops a comprehensive amendment from those FEP-based discussions to simultaneously revise the appropriate sections of its different FMPs. For example, if the Council wished to use Option 3 to add new FMU species to an FMP, yet the species to be added did not all fit appropriately into the same FMP, a comprehensive amendment process would allow the Council to add new species to different FMPs through the same discussion and analysis process, and through a combined rulemaking process to address each of the relevant FMPs.

Federal regulations at 50 CFR §600.310(d) explain, "MSA §302(a)(2) requires that an FMP contain, among other things, a description of the species of fish involved in the fishery. The relevant Council determines which specific target stocks and/or non-target stocks to include in the fishery... [A] Council may, but is not required to, use an 'ecosystem component (EC)' species classification. As a default, all stocks in an FMP are considered to be 'in the fishery,' unless they are identified as EC species through an FMP amendment process." For those species for which it has been determined that management measures are necessary, Option 3 deals with those species classified as "in the fishery" and Option 4 describes the process for those species able to be classified as EC species.

Option 3: Use FMP amendment process to add new FMU species to one of the Council's current FMPs.

Under the MSA, the term "fishery" means: "(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and (B) any fishing for such stocks."

Federal regulations at 50 CFR 600.10 define the term "fishery management unit" to mean: "a fishery or that portion of a fishery identified in an FMP relevant to the FMP's management objectives. The choice of an FMU depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives."

Fish stocks that are classified as FMU species are considered to be in the fishery, whether as target or non-target species. Federal regulations at 50 CFR 600.310(d)(3) and (4) provide the following definitions for "target stocks" and "non-target species," both of which are considered FMU species:

"Target stocks" are stocks that fishers seek to catch for sale or personal use, including "economic discards" as defined under Magnuson-Stevens Act section 3(9).

"Non-target species" and *"non-target stocks"* are fish caught incidentally during the pursuit of target stocks in a fishery, including "regulatory discards" as defined under Magnuson-Stevens Act section 3(38). They may or may not be retained for sale or personal use. Non-target species may be included in a fishery and, if so, they should be identified at the stock level. Some non-target species may be identified in an FMP as ecosystem component (EC) species or stocks.

After the MSA's 2007 reauthorization, the Council developed FMP amendments for all of its FMPs to address the 2009 revisions to the National Standard 1 Guidelines at 50 CFR 600.310, including Amendment 13 to its CPS FMP. Among other issues, Amendment 13 to the CPS FMP explicitly

considered whether to continue to classify krill, an unfished and non-target species, as an FMU species, or whether to classify it as an EC species. The Council recommended, and NMFS approved, continuing to classify krill as a species that is “in the fishery,” citing as rationale language from the preamble to the final rule implementing National Standard 1 guidelines (74 FR 3178, January 16, 2009.)

“If a stock contains one of the ‘in the fishery’ characteristics, then it belongs ‘in the fishery’, regardless of the management tools that will be applied to it (e.g., prohibition, bag limits, quotas, seasons, etc.). Also, if the intent is to prohibit directed fishing and retention throughout the exclusive economic zone (EEZ) for which a Council has jurisdiction, then the stock would, most likely, be identified in an FMP as ‘in the fishery’ rather than as an ecosystem component of one particular FMP.”

The Council has experience with the process of prohibiting (e.g. Amendment 12 to move krill into the CPS FMP) or significantly restricting (e.g. shortbelly rockfish) fisheries for FMU species. Adding a new FMU species to an FMP requires an FMP amendment process that would include the development of MSA-required harvest and habitat reference points for the new FMU species.

Option 4: Use FMP amendment process to add new EC species to one (or more) of the Council’s current FMPs.

At 50 CFR 600.310(d)(5), federal regulations provide details on classifying species as EC species, saying that those species should:

- (A) Be a non-target species or non-target stock;
- (B) Not be determined to be subject to overfishing, approaching overfished, or overfished;
- (C) Not likely to become subject to overfishing or overfished, according to the best available information, in the absence of conservation and management measures; and
- (D) Not generally be retained for sale or personal use.

Those same regulations provide further guidance, stating “Occasional retention of [a] species would not, in and of itself, preclude consideration of the species under the EC classification . . . EC species may be identified at the species or stock level, and may be grouped into complexes. EC species may, but are not required to, be included in an FMP or FMP amendment for any of the following reasons: For data collection purposes; for ecosystem considerations related to specification of OY for the associated fishery; as considerations in the development of conservation and management measures for the associated fishery; and/or to address other ecosystem issues. While EC species are not considered to be ‘in the fishery,’ a Council should consider measures for the fishery to minimize bycatch and bycatch mortality of EC species consistent with National Standard 9, and to protect their associated role in the ecosystem. EC species do not require specification of reference points but should be monitored to the extent that any new pertinent scientific information becomes available (e.g., catch trends, vulnerability, etc.) to determine changes in their status or their vulnerability to the fishery. If necessary, they should be reclassified as ‘in the fishery’.”

The Council has addressed EC species designations in its FMP amendment processes to implement the 2007 MSA requirements for annual catch limits (ACLs) and accountability measures (AMs) for FMP species. Among other things, Amendment 13 to the CPS FMP added Pacific herring (*Clupea pallasii pallasii*) and jacksmelt (*Atherinopsis californiensis*) to the FMP and classified them as EC species with the intent of monitoring the catch of those species and report landings in the annual Stock Assessment and Fishery Evaluation report. The EA for Amendment 13 explains that the Council’s primary rationale for adding these species as EC species was to monitor and minimize bycatch mortality of non-target species. Similarly, Amendment 2 to the HMS FMP reclassified bigeye thresher shark (*Alopias superciliosus*) and

pelagic thresher shark (*A. pelagicus*,) which were previously FMU species, as EC species. Only minor levels of West Coast commercial and recreational catch have been reported for these species since the FMP was implemented, although the frequency of their appearance within the CCE tends to increase during El Niño warming periods. Similar to the use of the EC species category in the CPS FMP, bigeye and pelagic thresher shark were designated as EC species to monitor their catch levels over time for periodic assessments whether these species need to be considered in the fishery. Neither the Salmon nor Groundfish FMPs have any designated EC species. For those FMPs, there were no species that both met the National Standard 1 EC classification requirements and which the Council felt were acceptable to remove from the harvest parameter-setting requirements for FMU species.

The Council's approach to classifying EC species in its FMPs is consistent with how other fishery management councils have approached EC classifications. Most councils have either not designated EC species, or have designated EC species that have close taxonomic relations to FMU species. For example, the North Pacific Fishery Management Council (NPFMC) has classified several scallop species as EC species within its Scallop FMP, via Amendment 13 to that plan. As with the Pacific Council's CPS and HMS FMPs, the EC species in the Scallop FMP will be monitored to ensure that they remain untargeted and to ensure that any incidental catch that may occur does not affect the sustainability of the stocks.¹ The SAFMC recently completed a Comprehensive Annual Catch Limit Amendment that simultaneously amended several of the FMPs to address a variety of issues, including amending the South Atlantic Snapper-Grouper FMP to classify six snapper-grouper species as EC species. The SAFMC's EC species classification process assessed its list of FMP species against federal regulations for designating EC species at 50 CFR §600.310(d)(5), seeking species that are not targeted, not subject to overfishing, or likely to be subject to overfishing in the absence of conservation and management measures, and not generally retained for sale or personal use. Similar to the NPFMC's Scallop FMP, fishing for Snapper-Grouper EC species is not expressly prohibited. Any future landings will be monitored for their effect on the stocks and to determine whether the EC species need to be re-classified as target species.²

In two notable cases, the NPFMC has classified large groups of EC species that do not have close taxonomic associations with FMU species. In 1998, the NPFMC first defined forage fish species categories within Amendment 36 to its FMP for Groundfish of the Bering Sea and Aleutian Islands and Amendment 39 to its FMP for Groundfish of the Gulf of Alaska. The NPFMC chose its groups of forage fish species based on data from the groundfish trawl fisheries, where lower trophic level species were occurring as minimal bycatch. The FMPs prohibited directed fishing for the forage species categories and restricted the fisheries to minimal levels of bycatch for these species.

The NPFMC Groundfish FMPs were updated via more recent amendments to comply with new requirements to establish annual catch limits and comply with National Standard 1 guidelines (Amendments 95 and 96 for the Bering Sea and Aleutian Islands, and Amendment 87 for the Gulf of Alaska FMPs). The FMPs now separate the "species or species groups [that] are likely to be taken in the groundfish fishery" into three categories: target species, prohibited species, forage fish species, with the latter two categories together representing the EC species of the FMPs. For illustration purposes, a portion of Section 3.1.2 of the Gulf of Alaska Groundfish FMP is excerpted here:

¹ North Pacific Fishery Management Council. September 2011. Environmental Assessment for Proposed Amendment 13 to the Fishery Management Plan for the Scallop Fishery off Alaska. (<http://www.fakr.noaa.gov/sustainablefisheries/amds/13/amd13ea0911.pdf>)

² South Atlantic Fishery Management Council. October 2011. Comprehensive Annual Catch Limit (ACL) Amendment for the South Atlantic Region. (<http://www.safmc.net/LinkClick.aspx?fileticket=OLK4OjG54Vs%3d&tabid=415>)

1. *In the Fishery:*
 - a) *Target species* – are those species that support a single species or mixed species target fishery, are commercially important, and for which a sufficient data base exists that allows each to be managed on its own biological merits. Accordingly, a specific total allowable catch (TAC) is established annually for each target species or species assemblage. Catch of each species must be recorded and reported. This category includes walleye pollock, Pacific cod, sablefish, shallow and deep water flatfish, rex sole, flathead sole, arrowtooth flounder, Pacific ocean perch, shortraker/rougheye rockfish, northern rockfish, “other slope” rockfish, pelagic shelf rockfish, demersal shelf rockfish, thornyhead rockfish, Atka mackerel, squid, sculpin, sharks, octopus, and skates.
2. *Ecosystem Component:*
 - a) *Prohibited Species* – are those species and species groups the catch of which must be avoided while fishing for groundfish, and which must be immediately returned to sea with a minimum of injury except when their retention is authorized by other applicable law (see also Prohibited Species Donation Program described in Section 3.6.1.1. Groundfish species and species groups under the FMP for which the quotas have been achieved shall be treated in the same manner as prohibited species.
 - b) *Forage fish species* – are those species listed in Table 3-1, which are a critical food source for many marine mammal, seabird and fish species. The forage fish species category is established to allow for the management of these species in a manner that prevents the development of a commercial directed fishery for forage fish. Management measures for this species category will be specified in regulations and may include such measures as prohibitions on directed fishing, limitations on allowable bycatch retention amounts, or limitations on the sale, barter, trade or any other commercial exchange, as well as the processing of forage fish in a commercial processing facility.³

The species within both of the NPFMC Groundfish FMPs’ forage fish species categories are:

- Osmeridae family (eulachon, capelin, and other smelts)
- Myctophidae family (lanternfishes)
- Bathylagidae family (deep-sea smelts)
- Ammodytidae family (Pacific sand lance)
- Trichodontidae family (Pacific sand fish)
- Pholidae family (gunnels)
- Stichaeidae family (pricklebacks, warbonnets, eelblennys, cockscombs, and shannys)
- Gonostomatidae family (bristlemouths, lightfishes, and anglemouths)
- Order Euphausiacea (krill)

The NPFMC does not establish annual harvest limits for its forage fish species and both FMPs state that there is insufficient information to provide EFH descriptions for forage fish species. Under federal regulations at 50 CFR 679.20(i)(3): “directed fishing for forage fish is prohibited within the Bering Sea, Aleutian Islands, and Gulf of Alaska; the sale, barter, trade, or processing of forage fish is prohibited except as fishmeal; and, retained catch of forage fish not exceeding maximum retainable bycatch amounts set in Federal regulations at 50 CFR 679, Table 10 may be processed into fishmeal for sale, barter, or trade.” NMFS’s Alaska Fisheries Science Center reports on the life histories of and data available on the FMP forage fish species, but does not have adequate data to conduct stock assessments for these species groups.⁴

³ North Pacific Fishery Management Council. December 2011. Fishery Management Plan for Groundfish in the Gulf of Alaska. (<http://www.fakr.noaa.gov/npfmc/PDFdocuments/fmp/GOA/GOA.pdf>.)

⁴ Ormseth, O. A. December 2011. Forage fishes in the Gulf of Alaska. In: NPFMC Gulf of Alaska Stock Assessment and Fishery Evaluation Report (<http://www.afsc.noaa.gov/REFM/docs/2011/GOAforage.pdf>). Ormseth, O.A., L.

For the NPFMC, the link between its groups of forage fish species and its Groundfish FMPs was that these forage fish species were being taken at minimal bycatch levels within their groundfish fisheries. To develop a similar list of forage fish as EC species for one or more of its FMPs, the Pacific Council might request that NMFS and the states review catch and landings data to assess which forage fish species or species groups might reasonably be considered bycatch within West Coast fisheries. Although EC species do not necessarily need to be bycatch species, there does need to be some nexus between an EC species or species group and the FMP that is used to regulate that species or species group. Assessing the need to minimize bycatch of EC species is one of the key reasons fishery management councils give for designating an EC species, but as described above, Federal regulations provide other potential reasons for identifying a species as an EC species.

In addition to its classification of previously FMU forage fish species of the Bering Sea, Aleutian Islands, and Gulf of Alaska as EC species within its Groundfish FMPs, the NPFMC also designated three broad categories of species as EC species within its Arctic FMP:⁵

- All finfish other than Arctic cod and saffron cod;
- All marine invertebrates other than snow crab;
- All other forms of marine animals and plant life.

The Arctic FMP designates Arctic cod, saffron cod, and snow crab as its FMU species, and the FMP's implementing regulations set OYs for these species at zero metric tons.⁶ The effect of the Arctic FMP is to prohibit all non-subsistence commercial fishing for species under the Council's authority, until and unless the best available scientific information indicates that such fishing could meet the FMPs precautionary and ecosystem-based management principles. The Arctic FMP also expressly prohibits commercial fishing for forage fish within the Arctic Management Area, with "forage fish" defined as "prey for other marine ecosystem fauna including fish, birds, and marine mammals."

While the Arctic FMP's use of the EC species designation is intriguing, the fishing and fisheries management history of the CCE is notably different from that of the U.S. Arctic EEZ, which has only recently been subject to significant enough declines in summer sea ice cover to warrant concerns about the potential development of commercial fisheries. The CCE has a long history of commercial, recreational, and subsistence fisheries, and information about CCE marine life is relatively data-rich compared to that for the U.S. Arctic EEZ. For these reasons, the Arctic FMP's approach to EC species is probably not as informative an example as the NPFMC's groundfish FMPs of how the EC species designation might be used for CCE fisheries.

Option 5: Use FMP amendment process to identify potential adverse effects on EFH as those that might result in the loss of certain prey of FMP species.

Under Federal regulations to implement the MSA's requirements for EFH at 50 CFR 600.815(a)(7),

Conners, M. Guttormsen, and J. Vollenweider. December 2008. Forage Fishes in the Gulf of Alaska. *In*: NPFMC Gulf of Alaska Stock Assessment and Fishery Evaluation Report (<http://www.afsc.noaa.gov/refm/docs/2008/GOAforage.pdf>).

⁵ North Pacific Fishery Management Council. August 2009. Fishery Management Plan for Fish Resources of the Arctic Management Area. (<http://www.fakr.noaa.gov/npfmc/PDFdocuments/fmp/Arctic/ArcticFMP.pdf>)

⁶ The Arctic FMP does not apply to Pacific salmon and Pacific halibut, both of which are regulated under different authorities.

“Loss of prey may be an adverse effect on EFH and managed species because the presence of prey makes waters and substrate function as feeding habitat, and the definition of EFH includes waters and substrate necessary to fish for feeding. Therefore, actions that reduce the availability of a major prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat that are known to cause a reduction in the population of the prey species, may be considered adverse effects on EFH if such actions reduce the quality of EFH. FMPs should list the major prey species for the species in the fishery management unit and discuss the location of prey species' habitat. Adverse effects on prey species and their habitats may result from fishing and non-fishing activities.” In other words, the prey themselves are not considered habitat, but are considered a component of EFH, similar to temperature, water quality, or sediment type. Prey species are considered a component of EFH because the loss of prey species within EFH may affect the ability of a managed species to use that EFH as feeding habitat – just as, for example, significant shifts in water quality may affect the ability of a managed species to use an EFH area as feeding habitat.

Under 50 CFR 600.815(a)(2)(iv)(C), options for managing the adverse effects from fishing on EFH include setting “. . . limits on the take of prey species.” One of the difficulties in relying solely on the EFH regulations to prohibit fishing for currently unfished species is that, while Federal regulations require Councils to act to “prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable,” Councils are only *required* to do so “if there is evidence that a fishing activity may adversely affect EFH in a manner that is more than minimal and not temporary in nature, based on [evaluations under MSA]” 50 CFR 600.815(a)(2)(ii). Councils may take precautionary actions, but such actions would be better supported in the record if the accompanying analysis could establish the likelihood of an adverse effect that would be either more than minimal, not temporary in nature, or both. To use Option 5, the Council would, at a minimum, need to clearly identify:

- The particular species or species groups intended for protection from future fisheries evidence of their roles as prey of species already within an FMP;
- How some future fishery on the currently unfished species could adversely affect EFH, with attention to how that potential future fishery could have an effect that is more than minimal, not temporary in nature, or meet both of those qualifications.

Depending on the availability of food habits data for Council-managed species, many lower trophic level CCE species could probably be identified as the prey of one or more FMP species. It may be difficult, however, to support the assertion that a future fishery on an unfished prey species is imminently likely, and that the effects of that fishery on FMU species would be more than minimal and not temporary in nature. If a new fishery were to emerge in the EEZ for a currently unfished species, that fishery would still be subject to all of the restrictions of the MSA. The question might then be: If a new fishery emerges for a currently unfished prey species, would allowing harvest of that prey species at its OY level affect current FMU species in a manner that is more than minimal and/or not temporary in nature?

Assuming the required scientific information could be developed for the two points, above, prohibitions for fishing on prey species could be developed through the FMP amendment and implementation process. Unfished prey species would be identified as components of EFH in one or more FMPs via FMP amendment, and implementing regulations for the FMP amendment(s) could include prohibitions on harvest of the identified prey species. The EPDT has reviewed other fishery management council processes nationwide, and has not found any council using EFH-based prohibitions on the take of unfished, unmanaged prey species.

Note on Combining Options 4 & 5: Alone, both Options 4 and 5 are weaker than Option 3, regulating fisheries for a species or species group through bringing that species or species group into an FMU. However, the rationale for regulating an unfished species or species group would be strengthened if that

species or species group could both: be identified as the prey of a current FMU species, and meet the requirements for classification as an EC species. The FMP amendment and regulatory implementation process would still follow that described for Option 4, but would have the additional scientific support and rationale provided by identifying the protected species as prey (as would be necessary for Option 5).

(C) DEVELOPING A NEW FMP

Option 6: *Shift ongoing FEP development process to an Ecosystem FMP development process.*

In June 2011, the Council decided to move forward with an advisory FEP, with the option for expanding that FEP to include future regulatory authority. The 2004 HMS FMP is the Council's most recently-developed new FMP. Should the Council wish to add a new Ecosystem FMP, much of the background discussion done to date for the FEP could also be used as background material for an Ecosystem FMP. At 16 U.S.C. 1853, the MSA details 15 required and 13 discretionary provisions for FMPs. Required FMP provisions are reproduced here:

CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

(a) **REQUIRED PROVISIONS.**—*Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—*

(1) *contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—*

(A) *necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;*

(B) *described in this subsection or subsection (b), or both; and*

(C) *consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;*

(2) *contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;*

(3) *assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;*

(4) *assess and specify—*

(A) *the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),*

(B) *the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and*

(C) *the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;*

(5) *specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;*

(6) *consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting*

because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

Since 2009, the Western Pacific Fishery Management Council (WPFMC) has managed its fisheries through FEPs that meet the MSA requirements for FMPs and manage fisheries with MSA-based regulatory authority. The WPFMC's FEPs reflect that council's efforts to reorganize its FMPs from its prior species-focused documents that applied to its geographically diverse areas of responsibility. Its

FEPs are place-based documents that are geographically-focused, yet diverse in the array of species and fisheries they manage. The Ecosystem FMP envisioned in this option would not be analogous to the WPFMC's FEPs, since the FMP of this option would not manage any active fisheries.

As discussed under Option 4, the NPFMC's Arctic FMP was essentially created for the purpose of preventing the unchecked growth of commercial fisheries within the recently-opened U.S. Arctic EEZ. That FMP uses three species that are commercially taken in other ecosystems as its anchoring FMU species, and then asserts management over all forms of marine animals and plant life not otherwise managed as FMU species, or through international management processes (salmon and Pacific halibut). If the Pacific Council wished to develop an Ecosystem FMP, it would need anchoring species data-rich and plausibly fishable enough to meet the MSAs required provisions for FMPs.

(D) AUTHORITIES AVAILABLE TO ENTITIES OUTSIDE OF OR ANCILLARY TO THE COUNCIL PROCESS

Option 7: Consult with the five West Coast National Marine Sanctuaries to assess whether the sanctuaries would consider prohibiting harvest of unfished fish species under the National Marine Sanctuary Act authority.

There are five national marine sanctuaries off the U.S. West Coast, authorized and managed under the National Marine Sanctuaries Act (NMSA): Olympic Coast, Cordell Bank, Gulf of the Farallones, Monterey Bay, and Channel Islands National Marine Sanctuaries. The Council, NMFS and the West Coast sanctuaries have collaborated in the past to meet fishery management and sanctuary objectives by developing regulations to restrict or prohibit fishing activities within sanctuary waters in ways that meet the mandates of both the MSA and the NMSA – such as in designating groundfish EFH conservation areas within sanctuary boundaries or the ban of krill harvest in the West Coast EEZ.

If NOAA were to prohibit the future development of fisheries for currently unfished fish species within sanctuary boundaries, West Coast sanctuaries would do so in the context of the NMSA and authority to regulate and manage fishing activity, the terms of designation for a sanctuary, and the sanctuary management plans and review processes. Established NOAA protocols describe how NOAA administers the regulation of fishing in national marine sanctuaries⁷. These protocols consider fishing regulations under the MSA and NMSA, and the importance of having all relevant parties involved in the process. Such parties typically include Office of National Marine Sanctuaries, Sanctuary Advisory Councils, NMFS, Regional Fishery Management Councils (i.e. PFMC), federally recognized Indian Tribes, states, other federal agencies, and interested parties. The Office of National Marine Sanctuaries has the authority to issue general regulations for each sanctuary and the sanctuary system as a whole. These regulations can, among other things, specify the types of activities that can and cannot occur within a sanctuary (16 U.S.C. 1439).

Section 304(a)(5) (16 U.S.C 1434) of NMSA provides authority to issue fishing regulations as may be necessary to protect the resources and qualities for which individual sanctuaries were designated. Certain fishing activities could be regulated, if those regulations were determined necessary to protect sanctuary resources or qualities. The NMSA has specific requirements as to how any sanctuary fishing regulations are to be developed. Specifically, the NMSA requires NOAA to provide the relevant fishery management councils the opportunity to prepare draft sanctuary fishing regulations. If the fishery management council takes the opportunity to prepare draft regulations, it is to use the MSA's national standards (16 U.S.C.

⁷ NOAA's Regulation of Fishing in National Marine Sanctuaries. July 2008.
http://sanctuaries.noaa.gov/library/national/fishing_071708.pdf

1851) as guidance to the extent that those standards are consistent and compatible with the goals and objectives of the sanctuary.

Furthermore, NMSA section 304(a)(4) (16 U.S.C 1434) describes the designation process for each sanctuary, for which NOAA lists the activities that may be subject to regulation in the designation document and issues regulations addressing what activities will be regulated. Both the list of activities subject to regulation, as well as the regulations themselves can be amended as long as NOAA follows the legal and administrative processes (e.g., the NMSA, National Environmental Policy Act and Administrative Procedure Act) required. For any activity not included in a sanctuary's terms of designation, NOAA can amend the terms of designation, but must follow the same procedures by which the original designation was made. Those procedures include consulting with relevant federal and state agencies, and Congress, and providing opportunity for the public to give input. As indicated above, in cases where fishing is added to a sanctuary's terms of designation (as an activity subject to regulation), NOAA must also provide the relevant fishery management council the opportunity to draft such sanctuary fishing regulations.

In most cases of fishing regulations in West Coast sanctuaries, NOAA has used the MSA to meet its goals and objectives. In the case where fishing regulations have been promulgated under the NMSA, the Office of National Marine Sanctuaries has done so under the prescribed process of NMSA Section 304(a)(5). In the Channel Islands National Marine Sanctuary, for example, NOAA determined that the MSA did not have the specificity or record to regulate all fisheries within specific marine zones under Amendment 19 of the Groundfish FMP. Therefore, NOAA used NMSA authority to restrict or prohibit fishing activity in the water column within a network of Channel Islands National Marine Sanctuary marine protected areas. In doing so, NOAA amended the sanctuary's terms of designation to regulate fishing, but only within the newly designated MPAs.

If the sanctuaries were willing to address protection of unmanaged species under NMSA authorities, the financial burden of addressing the issue would be significantly reduced for the Council itself. For the states of Washington and California, the treaty tribes, and NOAA, however, many of the same resources that would be used to address unmanaged species management within the Council process would have to be dedicated to a sanctuary process. Several West Coast sanctuaries could consider addressing this issue for the Council during the revisions of their sanctuary management plans. The four California sanctuaries are scheduled for revision beginning in 2013. Olympic Coast National Marine Sanctuary recently finalized the revision of their management plan in 2011 and is not scheduled for a revision until 2016.

Option 8: *Consult with the three West Coast states to assess their willingness to use state processes to: restrict or prohibit fishing for unfished species by state license holders; restrict or prohibit the landings of unfished fish into the states, or the processing of landings into certain products (e.g., reduction to fish meal).*

The states hold broad authority to manage fish and wildlife by regulating areas and activities that fall under their jurisdiction. For marine fisheries, this jurisdiction typically extends to state waters, to the fishing activities of vessels and residents of the state, and to activities occurring within the state, including the landing, delivery, transport, and processing of fish.

State authority can be used to place a wide range of conditions on the time, place, and manner of fishing and fishing-related activities. These conditions can range from outright prohibitions on the harvest of certain species and use of specific fishing gears to more targeted limits on incidental catch and on the permissible uses of fish (e.g., human use vs. animal feed). Depending on the specific issue, the authority to enact new rules may rely with the state's legislative body, fish and wildlife/game commission, or state

fisheries management agency. For the issues considered here, authority could likely be addressed at the commission or agency level, although state legislatures could also step in and make new fisheries laws.

Addressing a coastwide issue through three state processes could have advantages and disadvantages. The main advantage is that states could address a particular issue in a manner that is largely consistent without being wholly uniform in approach. A potential disadvantage would be that three different processes would have to be engaged and those processes could end up with inconsistent results. Inconsistency in rules among the states may risk placing states at a disadvantage to one another by directing the benefits of a sustainable fishing opportunity to a particular state. At the same time, the states often issue state-specific rules in response to regulations issued through the Council process. On matters involving Federal management, state rules can be more restrictive yet cannot directly conflict with Federal rules. It would also be difficult for state rules to affect fishing activities that occur only in the EEZ and where fish are delivered to another state or country. Such activities may not be common and would seem unlikely to sustain large scale harvests, yet they are not unprecedented. Vessels do move between the U.S. West Coast and Alaska, and between waters off Canada, Mexico, and distant countries.

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. Assessing what can and cannot be fished in Oregon would therefore require an assessment of what has already been prohibited. In Washington, that assessment would involve looking at the scope of fishing activities that are currently authorized. In California, recreational fisheries are prohibited unless authorized, however, commercial fisheries are allowed unless specifically regulated or prohibited. Assessments similar to those described for Washington or Oregon would also be needed to evaluate the possibility of a new fishery. Specifics for each state follow below.

Washington

The discussion that follows provides a general overview of Washington's laws and regulations governing commercial fishing. A specific assessment of the circumstances presented by a particular fishing activity, either proposed or existing, would be needed to determine whether or not that activity is allowable under current law. However, a general assessment of the issue explored in this report suggests that new fisheries of the type focused on in this document could not start and or deliver into Washington without changes to current state regulations.

Of note, Washington's coast is home to a number of Native American tribes with treaty-reserved fishing rights. Four tribes have treaty rights to fish in their usual and accustomed fishing areas off of Washington's Pacific coast: the Makah Nation, the Quileute Indian Tribe, the Hoh Indian Tribe, and the Quinault Indian Nation. The state and the tribes engage in co-management of shared fisheries in the states, yet the tribes manage their own fishing activities and the rules of the state do not generally apply to those activities. The treaty tribes could therefore, theoretically speaking, conduct a fishery for a species that the state chose to not otherwise allow. However, the state and the tribes are largely consistent as to the species fished and the manner in which they are fished for existing fisheries. It is almost certain that the state and the tribes would engage in a thorough consultation with one another before starting up new fisheries.

As to state fisheries, the most likely change that would be needed to start a new fishery would be the classification of the species of interest as a "food fish." If the species of interest were already classified as a food fish, then it is likely that current rules would limit any significant expansion of harvest on that species.

WDFW consists of the Director, responsible for operation and management of the agency, and the Washington Fish and Wildlife Commission (WFWC), which has the authority to set fisheries policy for the state, including the authority to classify species as food fish.⁸ The list of species currently classified as food fish is found in regulation and includes a number of species that are typically named as forage fish.⁹

By state rule, it is illegal to take fish from the Pacific Ocean “except at the times, places and in the manners and for the species, quantities, sizes or sexes” authorized in regulation.¹⁰ The statutory definition of fish applies this rule to all fin fish whether classified or not.¹¹ For fish classified as food fish, state rules also prohibit their possession in areas under state jurisdiction unless that possession is otherwise provided for by state or federal law.¹² Under state law, a license or permit is needed to engage in commercial fishing and to deliver and purchase fish in the state.¹³ Regulations describe the allowable fishing gears the “time, place, and manner” in which they can be used.¹⁴

Washington’s legislature establishes commercial fishery licenses and grants the Director authority to “determine the species of food fish that may be taken” with those licenses, as well as “the gear that may be used . . . , and the areas or waters in which the licenses may be used.”¹⁵ If the Legislature establishes a license “for a particular species, gear, geographical area, or combination thereof,” then it is not permissible to use “a more general fishery license . . . to take food fish in that fishery.”¹⁶ In light of these provisions, WDFW would need to examine a new proposal for fishing activity against the current set of licenses and their time, place, and manner rules to determine whether it is permissible without a change to current rules.

Specific to forage fish, the WFWC has had a policy in place to guide their harvest since 1998.¹⁷ Under that policy, it is “unlawful to fail to immediately return to the water, unharmed, all species of fish other than herring, anchovy, candlenose, shad, and sardine taken in operation of purse seine, lampara, dip bag net, or hand net gears.”¹⁸ The regulations place various time, area, and gear limitations on the harvest for those species named in that provision. Again, to permit a new fishery under state law for other species that might be considered as forage fish or otherwise be of concern to the Council, the WFWC would likely need to first classify the species as a food fish and then go through a process to determine the appropriate rules on time, place, and manner of fishing.

For situations not covered by current rules, WDFW would look to the emerging commercial fishery process established by statute and regulation.¹⁹ This process can be applied at the Director’s discretion for species newly classified as food fish by the WFWC; or, for species that are already classified and are proposed to be fished in new areas, with new gears or methods, or at new levels of effort.

⁸ RCW 77.12.047(1)(h).

⁹ WAC 220-12-010.

¹⁰ WAC 220-20-010(1).

¹¹ RCW 77.08.010(17).

¹² WAC 220-20-010(2).

¹³ RCW 77.65.010

¹⁴ See Chapter 220-16 WAC

¹⁵ RCW 77.65.200(2). The list of current commercial fishing licenses is given at RCW 77.65.200(1).

¹⁶ RCW 77.65.200(2).

¹⁷ WFWC Policy C-3012: <http://wdfw.wa.gov/commission/policies/c3012.html>.

¹⁸ WAC 220-44-020.

¹⁹ RCW 77.65.400 and Chapter 220-88 WAC.

Rules issued by the WFWC or directly by the Director follow procedures established by the state's Administrative Procedures Act.²⁰ Rules that require approval by the WFWC must also mesh with the WFWC's schedule and priorities. From the time a rule pre-proposal is issued, it typically takes 4 to 6 months to issue the final rule and for the rule to become effective. The WFWC and Director also have the authority to issue emergency rules that can remain in effect for 120 days.

Oregon

Oregon's Food Fish Management Policy, established by the state's Legislature, is intended to provide for the optimum economic, commercial, recreational, and aesthetic benefits for present and future generations of the citizens of the state.²¹ This policy includes the following broad goals:

- Maintain all species of food fish at optimum levels and prevent the extinction of any indigenous species.
- Develop and manage the lands and waters of this state to optimize the production, utilization and public enjoyment of food fish.
- Permit an optimum and equitable utilization of available food fish.
- Develop and maintain access to the lands and waters and the food fish resources thereon.
- Regulate food fish populations and the utilization and public enjoyment of food fish in a compatible manner with other uses of the lands and waters and provides optimum commercial and public recreational benefits.
- Preserve the economic contribution of the sport and commercial fishing industries, consistent with sound food fish management practices.
- Develop and implement a program for optimizing the return of Oregon food fish for Oregon's recreational and commercial fisheries.

The Oregon Fish and Wildlife Commission (OFWC) formulates general state programs and policies for management and conservation of fish and wildlife resources.²² The Legislature also granted the OFWC authority to adopt regulations for seasons, methods and limits for recreational and commercial take and sale as well as other restrictions and procedures for taking, possessing or selling food fish, with the exception of oysters, which are regulated by the Oregon Department of Agriculture.

OFWC adopts permanent rules (Oregon Administrative Rules, OARs) through a formal process that includes public notice of the intent for rulemaking, an economic analysis, and public review and comment. The OFWC delegates the authority to adopt temporary rules to the Director of ODFW. Temporary rules may be considered for various reasons, including the achievement of quotas, optimum yields, harvest limits or harvest guidelines, and to conform to federal regulations. Temporary regulations can be adopted, filed and in effect within a single business day, but in practice, 72 hours public notice is usually provided. A temporary rule approved by the Director is ratified by the OFWC at its next meeting. Once adopted, temporary regulations are in effect for up to 180 days. For federal fisheries regulations, the state may adopt rules that concur with federal regulations that are more conservative.

Again, Oregon fisheries are generally open, unless closed or otherwise restricted by regulation. A commercial license is required to commercially take, land, process, buy or sell an ocean food fish species. In addition to federal license limitation programs for some FMP species, Oregon limits participation in ten state fisheries: sardine, salmon troll, Dungeness crab (ocean), pink shrimp (trawl,) black rockfish/blue

²⁰ For more information on Washington's rulemaking process and timeline see:

<http://wdfw.wa.gov/about/regulations/> & <http://www.ora.wa.gov/regulatory/rulemaking.asp>.

²¹ Oregon Revised Statute (ORS) 506.109.

²² ORS 496.112 through ORS 496.118.

rockfish/ nearshore fish, scallop, sea urchin, bay clams (diving,) roe-herring, and brine shrimp.²³ In addition, statutory authority authorizes the department to require a permit to harvest animals living intertidally on the bottom.²⁴ Conditions on the permit may restrict time, place, manner or other factors related to commercial fishing, landing, and processing. Fisheries for species not explicitly covered under state or federal fisheries regulations and which are not a species living intertidally on the bottom must comply with gear and general closed area requirements for ocean foodfish species, but are otherwise not restricted in the time, place or amounts harvested, landed, processed, or sold.

California

The California Legislature mandated a proactive approach to managing and regulating new or developing fisheries in 1999 as part of the implementation of the Marine Life Management Act (MLMA²⁵). However, it did not prohibit development of new fisheries; the MLMA recognized the need to be more precautionary in allowing existing fisheries to expand, or to encourage the initiation and growth of new fisheries that would be sustainable from the onset. One significant tenet of the MLMA was to transfer primary management authority for the state's marine fisheries from the Legislature to the Fish and Game Commission (CFGC). This change has been very important for the state's commercial fisheries.

In 2000, the CFGC developed its own emerging fisheries policy based on the mandates in the MLMA. The CFGC Policy on Emerging Fisheries specifies that the Director of the California Department of Fish and Game (CDFG) shall make a determination as to whether a fishery is "emerging" by considering whether there has been:

an actual increase in landings of the species in question; an increase in the number of applications for experimental gear permits received by the Commission for this fishery; an increase in the amount or efficiency of the gear used in the fishery; or any evidence that the existing regulations are not sufficient to insure a stable, sustainable fishery.

The MLMA also mandates that the growth of sustainable fisheries be encouraged. The MLMA and the CFGC policy lay out general guidelines for allowing new fisheries to develop with appropriate constraints and safeguards determined by the information available on that species and associated fisheries. These "emerging fisheries" would be identified by the CDFG Director, and are distinguished from "established" fisheries. "Established fisheries²⁶" were defined as those in existence prior to 1999 as evidenced by one or more of the following characteristics: a restricted access program, management under a federal FMP, established annual population estimates and catch quotas, the regulations considered at least biennially by the CFGC, or at least two regulations govern the fishery (e.g., seasons, gear, amount, time, area restrictions).

Prior to the Director's determination of an emerging fishery, the CFGC may authorize take under an experimental permit program intended to gain information on the fishery. The CFGC may grant experimental gear permits upon request in such circumstances²⁷, which provides that "*the Commission shall encourage the development of new types of commercial fishing gear and new methods of using existing commercial fishing gear*" by approving experimental gear permits subject to conditions that the CFGC prescribes. Experimental gear permits, which are only one year in term, may not be authorized for

²³ ORS 508.775 through ORS 508.960.

²⁴ ORS 508.116.

²⁵ Fish and Game Code (FGC) 7090

²⁶ FGC 7090(b)

²⁷ FGC 8606

more than four consecutive years. After that time, the CFGC must either decide to allow a fishery and adopt regulations for its management or shut it down.

Under the emerging fishery status, CDFG closely monitors the fishery's progress and the CFGC can make regulations that remain in effect for 12 months or the time needed to adopt a FMP, whichever is shorter. Management measures that could be initiated by the CFGC could include restricting landings, time, area, gear, or access or establishing permit fees. The CFGC can also impose fees used for cost recovery of department management and research for the fishery. As with other mandates under the MLMA, sustainable fishery development would be accomplished in conjunction with public involvement and collaborative research throughout the process.

Actions to sustainably manage the fishery are developed by CDFG and recommended to the CFGC who adopts appropriate management measures after public discussion. These measures will be in effect until a FMP can be completed. The MLMA Master Plan contains a list of fisheries in the queue for FMP development; a newly proposed fishery would be ranked according to its need and the information available on the species (e.g. the magnitude of the fishery and any concerns about the resource status). In most cases, there is limited knowledge, if any, on essential life history characteristics or stock status to inform proposed management measures. Management measures adopted by the CFGC may be revisited in subsequent years to evaluate their progress and effectiveness. When an FMP is developed, the FMP would include a three-year evaluation period and a research plan that includes objectives and methods for evaluating the fishery.

California recently determined two fisheries to be emerging fisheries, based on public desire to initiate a new fishery (Tanner crab) or changes in the prosecution of an existing, low-level fishery (Kellet's whelk). However, the approach and process for developing new management measures for each fishery were different due to the distinct characteristics of each fishery. When developing appropriate factors for limiting each fishery so it would be sustainable, the CFGC and CDFG considered the existing scope and potential for each fishery, any resource concerns, available essential fishery information, and then weighed the benefits and costs (e.g., monetary and CDFG or CFGC resources) of various management measures against the gain from those measures to allow an expanding albeit sustainable fishery.

Tanner crab fishery: The grooved Tanner crab (*Chionoecetes tanneri*) is a leggy, deep sea crab related to the southern California sheep crab, Alaskan snow crab and true Tanner crab. The impetus for development of this fishery began in the late 1990s when existing regulations did not provide for the larger traps that would be needed to catch Tanner crabs. So, the fishery was prohibited until the completion of an experimental fishery and then subsequent approval of management measures adopted by the CFGC.

- A few experimental permits were authorized by the CFGC with the requirements of industry-funded on board observers for biological data collection (2001 through 2004). [Other experimental permits were requested during this time, but denied.]
- On-board observer data collected from the experimental fishery, as well as information provided in the operator's trap logbooks, formed the basis for analysis and development of the proposed management strategies.
- In 2005, due to the success of the experimental Tanner crab fishery in 2003 and 2004, the CDFG determined that the Tanner crab fishery resource off California satisfied the requirements of Fish and Game Code §7090 as an emerging fishery.
- Following that determination, the CFGC adopted regulations for the sustainable development of a small to moderate-scale commercial Tanner crab trap fishery in deep water off the coast of California. New regulations included: a \$10,000 permit fee, trap specifications, limits on trap

number, trip limits, mandatory observers (to obtain biological information) for the first 60 days following the commencement of the season, a seasonal catch limit (2 million pounds), a male-only fishery, and a size limit.

While a full restricted access program was not developed for this fishery, the high permit fee is expected to limit future entrants and expansion of the fishery.

Kellet's Whelk fishery: A fishery for Kellet's whelk (*Kelletia kelletii*) was also recently designated as one of the state's emerging fisheries. For many years, a low level fishery for Kellet's whelk existed as an incidental component of the commercial trap fisheries for rock crabs and lobster; in addition they were also prey for commercial and recreational divers. However, there were indications that the fishery was becoming more targeted than incidental, and take and participation were increasing. The limited life history information available indicated that this species is slow growing, long-lived and forms spawning and egg-laying aggregations making it vulnerable to over-exploitation.

Growing concern surrounding the unmanaged, low-level fishery for Kellet's whelk was discussed by the CFGC Marine Resources Committee several times over two years. In addition, the CDFG completed a status report on the species that recommended interim precautionary regulations be implemented until a stock assessment could be completed.²⁸ The recent designation of southern rock crab trap permits as transferable was seen as a relatively inexpensive point of entry for new participants wishing to retain Kellet's whelk caught incidentally in crab traps. There was concern that new participants, coupled with more targeted effort and possible expanding markets would result in increased, unsustainable levels of harvest of Kellet's whelk. Consistent with the state's emerging fisheries policies, the CDFG recommended, and the CFGC designated, Kellet's whelk as an emerging fishery on April 7, 2011. In addition, the CFGC directed the CDFG to develop regulations that would manage sustainable take in the fishery according to the MLMA.

As the CDFG and CFGC considered appropriate management measures for Kellet's whelk, the low value and small scale of the fishery were drivers to develop reasonable measures that would match CDFG's ability and resources to actually manage the fishery. Management measures that were considered but rejected included a whelk permit, a size limit, depth limits, gear restriction (no take by diving), defining incidental as a percent of the target species, cumulative trip limits and logbooks. Because this was a relatively small fishery, many of these measures were beyond the scope of effective management due to limited CDFG resources.

Summer spawning aggregations were targeted by divers taking Kellet's whelk and limiting effort during spawning was one proposed management option. The CFGC adopted a recreational and commercial seasonal spawning closure and a new 100,000 Total Allowable Catch in 2011, which was about 60 percent of recent landings. CDFG will be monitoring the fishery and its progress, however, CDFG has not developed a biological sampling program for this fishery nor are there immediate plans for an assessment or FMP development.

| Table 2: Options, Meeting and Notice Processes, and Effects (Does NOT include National Environmental Policy Act processes, which would be auxiliary to Council/NMFS processes described below.) | | |
|--|---|--|
| <i>Option</i> | <i>Council & NMFS (or other) Processes</i> | <i>Effect on Fishing for Unmanaged Fish Species</i> |
| Status Quo | N/A | None – open to persons/vessels meeting the requirements of the List of Fisheries and with the capital to develop a new fishery and markets for harvested products. No new fisheries could start within the EEZ without notification to the Council under 50 CFR 600.725 and 50 CFR 600.747. |
| Option 1: Recommend updating List of Fisheries and Gear | <p><i>1st Council meeting:</i> send current List and potential changes out for review by states, tribes, advisory bodies, and public.</p> <p><i>2nd Council meeting:</i> adopt recommendations for revisions to List and forward to NMFS.</p> <p><i>1st Federal Register Notice:</i> NMFS publishes Council recommendations as proposed rule to revise 50 CFR 600.725(v).</p> <p><i>2nd Federal Register Notice:</i> To be published if NMFS partially or fully approves the Council’s recommendations as a final rule to revise 50 CFR 600.725(v).</p> | Open to persons/vessels meeting the updated and more restrictive List of Fisheries and with the capital to develop a new fishery and markets for harvested products. No new fisheries could start within the EEZ without notification to the Council under 50 CFR 600.725 and 50 CFR 600.747. |
| Option 2: Recommend updating List of Fisheries and Gear. Also, set standards for new West Coast fisheries within FEP | <p><i>1st Council meeting:</i> send current List and potential changes out for review by states, tribes, advisory bodies, and public. Assign EPDT to develop draft FEP language to set standards for new West Coast fisheries within the FEP, or send the language within this report out for public review.</p> <p><i>2nd Council meeting:</i> adopt recommendations for revisions to List and forward to NMFS. Refine FEP language during Council discussion process, taking into account comments of advisory bodies and the public.</p> <p><i>3rd Council meeting:</i> Finalize FEP language on standards for new West Coast fisheries.</p> <p><i>NMFS review Federal Register Notice process:</i> Same as for Option 1.</p> | Open to persons/vessels meeting the updated and more restrictive List of Fisheries and with the capital to develop a new fishery and markets for harvested products. No new fisheries could start within the EEZ without notification to the Council under 50 CFR 600.725 and 50 CFR 600.747. FEP would set standards for the Council’s standards for reviewing a new fishery for its potential effects on Council conservation and management measures. |

Table 2: Options, Meeting and Notice Processes, and Effects (Does NOT include National Environmental Policy Act processes, which would be auxiliary to Council/NMFS processes described below.)

| <i>Option</i> | <i>Council & NMFS (or other) Processes</i> | <i>Effect on Fishing for Unmanaged Fish Species</i> |
|--|---|---|
| <p>Option 3: Add new FMU species to existing FMP(s)</p> | <p><i>1st Council meeting:</i> assign relevant teams and advisory bodies to develop a process and schedule for draft FMP amendment(s) to add new FMU species to applicable FMP(s).</p> <p><i>2nd Council meeting:</i> adopt process and schedule for draft FMP amendment(s), review list of potential species to be added to FMP(s). Review availability of scientific data and analyses needed to develop MSA-required harvest and habitat reference points for the new FMU species.</p> <p><i>3rd Council meeting:</i> Review recommendations of SSC and other advisory bodies on MSA-required harvest and habitat reference points for the new FMU species. Develop draft FMP amendatory language to be sent out for public review.</p> <p><i>4th Council meeting:</i> Review and either adopt FMP amendatory language (which would include MSA-required harvest and habitat reference points,) or revise and send language out for an additional round of review and comment by advisory bodies and the public. If an additional round of review and comment is needed, a <i>5th Council meeting</i> will be needed to finalize Council recommendations to NMFS.</p> <p><i>1st Federal Register Notice:</i> NMFS publishes a Notice of Availability for an FMP amendment for the appropriate FMP(s).</p> <p><i>2nd Federal Register Notice:</i> NMFS publishes Council recommendations as proposed rule.</p> <p><i>3rd Federal Register Notice:</i> NMFS will publish a final rule if it partially or fully approves the Council’s recommendations to amend the FMP(s) and Federal regulations.</p> | <p>Depending on Council’s recommendations and NMFS review and approval/disapproval process, future fishing for named FMU species would be restricted or prohibited.</p> |
| <p>Option 4: Add new EC species to</p> | <p><i>1st Council meeting:</i> assign relevant teams and advisory bodies to develop a process and schedule for draft FMP amendment(s) to add new EC species</p> | <p>Depending on Council’s recommendations and NMFS review and approval/disapproval</p> |

Table 2: Options, Meeting and Notice Processes, and Effects (Does NOT include National Environmental Policy Act processes, which would be auxiliary to Council/NMFS processes described below.

| Option | Council & NMFS (or other) Processes | Effect on Fishing for Unmanaged Fish Species |
|--|---|---|
| existing FMP(s) | <p>to applicable FMP(s).</p> <p><i>2nd Council meeting:</i> adopt process and schedule for draft FMP amendment(s), review list of potential species to be added to FMP(s). Review EC species definition parameters at 50 CFR 600.310 to assess whether species to be added to the FMP meet those parameters.</p> <p><i>3rd Council meeting:</i> Review recommendations of SSC and other advisory bodies on list of EC species and their compatibility with EC species parameters at 50 CFR 600.310. Develop draft FMP amendatory language to be sent out for public review.</p> <p><i>4th Council meeting:</i> Review and either adopt FMP amendatory language or revise and send language out for an additional round of review and comment by advisory bodies and the public. If an additional round of review and comment is needed, a <i>5th Council meeting</i> will be needed to finalize Council recommendations to NMFS.</p> <p><i>NMFS review Federal Register Notice process:</i> Same as for Option 3.</p> | <p>process, future directed fishing for named EC species would be restricted or prohibited.</p> |
| <p>Option 5: Identify potential adverse effects on EFH through loss of prey species</p> | <p><i>1st Council meeting:</i> assign relevant teams and advisory bodies to develop a process and schedule for draft FMP amendment(s) to review and revise EFH provisions within applicable FMP(s).</p> <p><i>2nd Council meeting:</i> adopt process and schedule for draft FMP amendment(s), review lists of prey species of FMP species to develop a draft list of those prey species that, if fisheries were to develop on those prey species, the loss of those prey species' biomass if managed within MSA parameters would be more than minimal and not temporary in nature.</p> <p><i>3rd Council meeting:</i> Review recommendations of SSC and other advisory bodies on list of prey species and their applicability to review parameters at 50 CFR 600.815. Develop draft FMP amendatory language to be sent out</p> | <p>Depending on Council's recommendations and NMFS review and approval/disapproval process, future directed fishing for named prey species would be restricted or prohibited.</p> |

| Table 2: Options, Meeting and Notice Processes, and Effects (Does NOT include National Environmental Policy Act processes, which would be auxiliary to Council/NMFS processes described below.) | | |
|--|---|--|
| <i>Option</i> | <i>Council & NMFS (or other) Processes</i> | <i>Effect on Fishing for Unmanaged Fish Species</i> |
| | <p>for public review.</p> <p><i>4th Council meeting:</i> Review and either adopt FMP amendatory language or revise and send language out for an additional round of review and comment by advisory bodies and the public. If an additional round of review and comment is needed, a <i>5th Council meeting</i> will be needed to finalize Council recommendations to NMFS.</p> <p><i>NMFS review Federal Register Notice process:</i> Same as for Option 3.</p> | |
| Option 6: Develop new Ecosystem FMP | <p><i>1st Council meeting:</i> assign EPDT and EAS to convert the FEP development process into an EFMP development process. Provide guidance on potential lists of species that could serve as FMU species within an EFMP. Assign Council staff to assess long-term budget implications of adding a fifth FMP and attendant permanent advisory bodies.</p> <p><i>2nd Council meeting:</i> adopt process and schedule for EFMP development. Review availability of scientific data and analyses needed to develop MSA-required harvest and habitat reference points for the new FMU species. Review EC species definition parameters at 50 CFR 600.310 to assess whether any species to be added to the FMP meet those parameters.</p> <p><i>3rd Council meeting:</i> Review recommendations of SSC and other advisory bodies on MSA-required harvest and habitat reference points for the new FMU species and on list of EC species and their compatibility with EC species parameters at 50 CFR 600.310. Develop draft FMP language to be sent out for public review.</p> <p><i>4th Council meeting:</i> Review and either adopt Ecosystem FMP or revise and send out for an additional round of review and comment by advisory bodies and the public. If an additional round of review and comment is needed, a <i>5th Council meeting</i> will be needed to finalize Council recommendations to NMFS.</p> | Depending on Council’s recommendations and NMFS review and approval/disapproval process, future directed fishing for named EFMP species would be restricted or prohibited. |

| Table 2: Options, Meeting and Notice Processes, and Effects (Does NOT include National Environmental Policy Act processes, which would be auxiliary to Council/NMFS processes described below.) | | |
|--|---|---|
| <i>Option</i> | <i>Council & NMFS (or other) Processes</i> | <i>Effect on Fishing for Unmanaged Fish Species</i> |
| | NMFS review Federal Register Notice process: Same as for Option 3, although NMFS may need to publish an initial Advance Notice of Proposed Rulemaking prior to Council’s Ecosystem FMP development process. | |
| Option 7: Request that Sanctuaries consider prohibiting unfished fish harvest | Initially, Council would send a letter of request to the five West Coast sanctuaries, suggesting that they initiate processes to consider restricting or prohibiting fishing for unfished species within their boundaries. Follow-up on the issue would include one or more Council meetings for each of the sanctuaries that takes up the issue. NOS and NMFS would collaborate on any rulemaking process emerging from Sanctuary discussions. That process would likely include at least a proposed and final rule, possibly preceded by Advance Notice of Proposed Rulemaking. | Depending on Sanctuary review and recommendation processes, directed fishing for named species would be restricted or prohibited within the boundaries of one or more West Coast national marine sanctuaries. |
| Option 8: Request that the three coastal states consider prohibiting unfished fish harvest, landing, or processing | Each state has a process for issuing time, place, and manner rules for fisheries. The states also have authority to regulate the landing, processing, and transport of fish. The authority to issue rules relevant to the issue most likely lies with the states’ Fish and Wildlife/Game Commissions. Each Commission sets its own agenda and follows a rulemaking process similar to that of the Council. Whether a new rule would be needed or not to address fishing a currently unfished species would depend on an assessment of the specifics against the current rules in each state. More detail on each state is given in the main document. | Various conditions on harvest and landing of fish could be placed on the residents and vessels of each state, ranging from outright prohibition to limits on how fish can be used (e.g., human use). Three different processes have the potential to result in three different outcomes depending on the policy preferences of each state’s Commission. |