



**Mid-Atlantic Fishery Management Council**  
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## MEMORANDUM

**Date:** April 1, 2015  
**To:** Chris Moore  
**From:** Julia Beaty  
**Subject:** Regulatory alternatives to protect unmanaged forage species

At its December 2014 meeting the Council voted to “initiate a regulatory action to prohibit the development of new, or expansion of existing, directed fisheries on unmanaged forage species until adequate scientific information is available to promote ecosystem sustainability”. This memo briefly describes regulatory alternatives which could address that motion.

Council staff recommend amending one of the Council’s current FMPs to include a list of currently unmanaged forage species as ecosystem component (EC) species (option 2, described below). A similar action was recently taken by the Pacific Fishery Management Council.

### *Options:*

#### **1. Update list of approved fisheries to ensure Council is notified of new fisheries**

All federally authorized fisheries and gear types are listed in 50 CFR 600.725. If an individual intends to use gear or participate in a fishery not on this list, he or she must first notify the appropriate Council of this intent in writing. The new fishery or the use of a new gear type will be allowed only if the NMFS Regional Administrator (RA) amends the list of approved fisheries to include that fishery or gear type. The Council may recommend that the RA not amend the list if the new fishery is likely to be detrimental to conservation and management efforts. The Council may also request that NMFS initiate emergency actions to prohibit the fishery or prepare or amend an FMP to prohibit the fishery (50 CFR 600.747).

The list of approved fisheries and gear types in 50 CFR 600.725 currently includes general categories which may allow individuals to pursue fisheries for unmanaged forage species without first notifying the Council of their intent to do so. These general categories include coastal gillnet (non-FMP), recreational fishery (non-FMP), and commercial fishery (non-FMP), each of which include approved gear types that could catch unmanaged forage species (e.g. gillnet, cast net, pound net, seine, trawl). The Council could request that NMFS update the list of approved fisheries and gears to remove these general categories, or remove only those

gear types which could be used to target unmanaged forage species. This would ensure that individuals intending to target currently unmanaged forage species in federal waters first notify the Council of their intent to do so and would allow the Council and NMFS to address these new fisheries on a case-by-case basis. This would not directly prohibit these fisheries, but would ensure that the Council has the opportunity to review the fisheries as they arise and take action to restrict their development if deemed necessary.

Council staff do not believe this option would effectively address the intent of the December 2014 motion to protect forage fish; however, if used in conjunction with an FMP amendment (described below), it would strengthen the Council's ability to address new fisheries for species not included in FMPs.

## **2. Amend FMP(s) to include ecosystem component species**

National Standard 1 guidelines allow Councils to designate "ecosystem component" (EC) species in FMPs. EC species are not considered "in the fishery" and so Councils are not required to specify reference points such as MSY, OY, and ABC (50 CFR 600.310(c)).

National Standard Guidelines state that EC species should: 1) not be targeted species; 2) not be determined to be subject to overfishing, approaching overfished, or overfished; 3) not likely to become subject to overfishing or overfished in the absence of conservation and management measures; and 4) not generally be retained for sale or personal use. EC species may be designated "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" (50 CFR 600.310 (d)(5)).

The Pacific Council recently took action to protect unmanaged forage species by amending all of their FMPs to include a list of forage species as ECs and prohibiting the development of new directed commercial fisheries for these species until sufficient information exists to suggest that a new fishery could be sustainable. The Mid-Atlantic Council could address the December 2014 motion through a similar amendment process. Such an amendment would add a list of unmanaged forage species to one or more of the Council's existing FMPs as EC species, would prohibit the development of new directed fisheries for those species, and would require that existing directed fisheries not expand beyond their current levels. If sufficient information becomes available to suggest that an EC species can support a directed fishery, that species can be re-classified as a species "in the fishery" to allow for directed harvest.

Federal guidelines on EC designation are flexible and give the Council considerable latitude as to when and how EC species can be designated.

Council staff recommend adding unmanaged forage species as ECs in a single FMP. This is likely the most efficient initial approach for achieving the goals of the December 2014 motion. The Council could include unmanaged forage species in the Mackerel, Squid, Butterfish (MSB) FMP, recognizing that mackerel, squid, and butterfish are also forage species. The Council could also add unmanaged forage species as ECs in the Bluefish FMP due to their role as prey for bluefish. The bluefish FMP is jointly managed with the ASMFC and so any amendment to that plan would require coordination with the ASMFC and would apply to state waters. An amendment to the MSB FMP would not require coordination with the ASMFC and

thus would be simpler from an administrative standpoint; however, the action would not apply to fisheries in state waters.

Under such an action (and all other options described here) evaluation of the extent of existing directed fisheries for unmanaged forage species would remain an unresolved issue that would need to be addressed before such an amendment could meet the full intent of the December 2014 motion.

### **3. Add unmanaged forage species to FMP(s) as stocks “in the fishery”**

If unmanaged forage species are added to one or more FMPs as species “in the fishery”, biological reference points for status determination (e.g. MSY, OY, ABC) must be specified (50 CFR 600.310(c)). The Pacific Council took similar action to protect krill through an amendment to their coastal pelagic species FMP. This amendment designated krill as a “prohibited harvest species” and set OY at 0. Council staff do not recommend this alternative for unmanaged forage species in the Mid-Atlantic region because sufficient data do not exist to specify reference points. A similar outcome could be obtained through designation of EC species (described above), which would not require the specification of reference points.

### **4. Create a new FMP**

The Council could develop a new FMP to protect unmanaged forage species, for example a forage fish FMP or an ecosystem FMP. The North Pacific Council took similar action to prevent commercial fishing in the Arctic through their Arctic FMP. The Arctic FMP used three commercially harvested species as “anchoring species” and prohibited commercial harvest of all other species. Council staff do not believe this is a viable option for our region as creating an entirely new FMP would create a high administrative burden and would not provide additional benefits beyond the simpler action of designating EC species in one or more existing FMP.

### **5. Designate forage species as part of Essential Fish Habitat**

Essential Fish Habitat (EFH) regulations could provide some protections to unmanaged forage species if those species were listed as components of EFH for one or more managed predator species. Councils are required to minimize adverse effects on EFH to the extent practicable (16 U.S.C 1853(a)(7)). Reductions in prey abundance could be considered an adverse effect to EFH. Council staff do not recommend this option as a means to address the December 2014 motion. EFH provisions are not sufficient to prevent directed harvest of any species designated as components of EFH. Councils are only required “to act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature” (50 CFR 600.815 (a)(2)(i)). Additionally, not all unmanaged forage species of interest may be important prey species for Council-managed predators.