

**Record of Decision for the Final Environmental Impact Statement on**  
**CHANGES TO PACIFIC COAST GROUNDFISH ESSENTIAL FISH HABITAT**  
**CONSERVATION AREAS AND BOUNDARIES OF THE TRAWL GEAR ROCKFISH**  
**CONSERVATION AREA**

**I. Introduction and Background**

The National Oceanic and Atmospheric Association's (NOAA) National Marine Fisheries Service (NMFS) developed this Record of Decision (ROD) in compliance with decision-making requirements pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (40 CFR 1505.2). The purpose of this ROD is to document NMFS' decision regarding the project.

This ROD: (1) states NMFS' decision and presents the rationale for that decision; (2) identifies the alternatives considered in the final Environmental Impact Statement (EIS) in reaching the decision; and (3) states whether all practicable means to avoid or minimize environmental harm from implementation of the selected alternative have been adopted, and if not, why they were not (40 C.F.R. § 1505.2).

NMFS will make a decision regarding Amendment 28 to the Pacific Coast Groundfish Fishery Management Plan (FMP). The Pacific Fishery Management Council (Council) recommended this action to change where bottom trawl fishing and bottom contact gear fishing is allowed off the coasts of Washington, Oregon, and California.

The Council recommended changes to groundfish essential fish habitat conservation areas (EFHCAs), adjustments to the size of the groundfish trawl rockfish conservation area (RCA), and use of Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorities to prohibit bottom contact fishing activities in waters deeper than 3,500 meters. NMFS' determination on whether these changes are consistent with applicable laws is the federal action requiring NEPA compliance. The analysis in the EIS informs NMFS, fishermen, and the public about the current and anticipated direct, indirect, and cumulative environmental effects of Amendment 28 to the FMP.

NMFS and the Council jointly prepared the EIS analyzing Amendment 28.

**II. Alternatives Considered**

The EIS analyzes several alternatives in comparison to the No Action Alternative. The alternatives are outlined in the paragraphs below and in a visual representation in Table 1 (see also Table 2-1 of the EIS).



Table 1. Summary of the Alternatives Considered.

Subject Area	No-action Alternative	Action Alternatives		
1. EFHCA changes (re-openings and closures)	No-action Alternative  Retains current suite of EFHCAs.	Alternative 1.a, Collaborative Alternative	Alternative 1.b, Oceana, et al. Alternative <sup>1/</sup>	Alternative 1.h, Preferred Alternative
2. Adjustments to Trawl RCA	Retains trawl RCA closures.  Continues to allow use of bottom contact gear in waters deeper than 3,500 m.	Alternative 2.c, Remove trawl RCA and implement block area closures (BACs) <sup>2/</sup>	Alternative 2.d, Preferred Alternative, Remove trawl RCA and implement BACs (Oregon and California)	
3. Use of MSA Sec. 303(b) discretionary authorities				Alternative 3, Preferred Alternative, Use MSA Sec. 303(b)(2)(A), Sec. 303(b)(2)(B), or Sec. 303(b)(12) to close waters deeper than 3,500 m to bottom contact gear, consistent with September 2015 Agenda Item H.8.a, <a href="#">Supplemental NMFS Report</a>

<sup>1/</sup> Alternative 1.b, Oceana, et al., was modified per November 2016 Agenda item F.4.b [CDFW report](#).

<sup>2/</sup> Alternative 2.c, would remove the trawl RCA coastwide outside the tribal U&A fishing area.

The alternatives in the EIS are divided into three subject areas:

- Subject Area 1 considers revising the existing suite of groundfish EFHCAs;
- Subject Area 2 considers adjustments to the groundfish trawl RCA; and,
- Subject Area 3 considers prohibiting bottom contact fishing gear in waters deeper than 3,500 meters.

### Subject Area 1 Alternatives

For all Subject Area 1 alternatives, closures would apply to bottom trawl gear, except for demersal seine (off California). No alternative considers modifying or establishing new EFHCAs in the tribal usual and accustomed areas (U&As) because NMFS and the treaty tribes will engage in consultation to consider any additional EFH protections that may affect the tribe's ability to exercise their treaty rights.

*Subject Area 1, Alternative 1.a—the Collaborative Alternative*—This alternative considers changes to the current suite of EFHCAs along the West Coast from the United States/Canada border south to Point Conception, California. Alternative 1.a would not propose any changes off the central Oregon coast or in the Southern California Bight area. It considers 59 areas: 43 closures and 16 reopenings (Figure 2-8, Chapter 2). Boundary adjustments are considered for multiple existing EFHCAs.

*Subject Area 1, Alternative 1.b—the Oceana et al. Alternative*—This alternative considers changes to the current suite of EFHCAs along the entire West Coast, from the United States/Canada border south to the United States/Mexico border. It considers 68 areas: 61 closures and 7 reopenings (Figure 2-9, Chapter 2). Boundary adjustments are considered for multiple EFHCAs.

*Subject Area 1, Alternative 1.h<sup>1</sup>—the Preferred Alternative*—This alternative considers changes to the current suite of EFHCAs along the West Coast from the central Washington coast south to the United States/Mexico Border. This alternative is a collection of areas, many of which were considered under an initial range of alternatives in the Preliminary Draft EIS at the Council's April 2018 meeting. It contains 70 proposed areas: 53 closures and 17 reopenings (Figure 2-10.)

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<sup>1</sup> In Subject Areas 1 and 2, some alternatives originally considered in the preliminary Draft EIS were considered but not forwarded for further detailed analysis (see section 2.2.4 of the EIS). To maintain continuity in the identification of each alternative with early public draft versions of the EIS and documents presented to the Council, alternatives considered in the EIS are not numbered consecutively.

## Subject Area 2 Alternatives

*Subject Area 2, Alternative 2.c—Coastwide Removal with BACs*—This alternative considers removing the trawl RCA coastwide, outside of the tribal U&As (south of Point Chehalis, Washington), thereby allowing access for vessels fishing with groundfish bottom trawl gear. The alternative also considers depth/latitude-based closures, BACs, inseason or preseason available as a harvest management tool to prohibit fishing by vessels using groundfish bottom trawl gear at certain times across a variety of depths and latitudes.

*Subject Area 2, Alternative 2.d—Preferred Alternative*—This alternative considers no changes to the trawl RCA off Washington, maintaining the trawl RCA management tool as described under the No-action Alternative. Off Oregon and California, the trawl RCA would be removed, and BACs would be available as a harvest management tool in the same way as Alternative 2.c.

## Subject Area 3 Alternatives

*Subject Area 3, Alternative 3—the Preferred Alternative*—This alternative considers using authorities under Magnuson-Stevens Act Sec. 303(b)(2)(A), 303(b)(2)(B), or 303(b)(12) to close waters deeper than 3,500 m to bottom contact gear, consistent with September 2015 Agenda Item H.8.a, [Supplemental NMFS Report](#). These waters are seaward of groundfish EFH and shoreward of the Exclusive Economic Zone (EEZ) (Figure 2-19).

## Synergy

Since alternatives in Subject Areas 1 and 2 have some spatial overlap, the alternatives in these two subject areas are combined in several ways (Table 2). Chapter 5 of the EIS discusses the impacts of these combinations.

Table 2. Combinations of alternatives that were compared to the No-action Alternative and to each other in Chapter 5 of the EIS.

Alternative	No-action Alternative	Combination 1	Combination 2	Combination 3	Combination 4 - Preferred
No-action Alternative	X		X (RCA only)		
1.a, the Collaborative Alternative		X			
1.b, the Oceana, et al. Alternative			X	X	
1.h, the EFHCA Preferred Alternative					X
2.c, the Eliminate RCA south of Pt Chehalis w/optional BACs Alternative		X		X	
2.d, the RCA Preferred Alternative					X

### **III. Public Involvement**

The Amendment 28 process began in 2013 when the Council issued a request for proposals for changes to the groundfish EFH provisions (Appendix E). The preferred alternative is based on some of the eight proposals that were received by the Council.

NMFS formally initiated environmental review of the project through a Notice of Intent (NOI) to prepare an EIS in the Federal Register on February 1, 2016 (81 FR 51020). This NOI announced a 30-day public scoping period, during which other agencies, tribes, environmental organizations, and the public were invited to provide comments and suggestions regarding issues and alternatives to be included in the EIS. Public scoping was also conducted during public meetings of the Council and a variety of informational material related to the proposed action was made available to attendees of those Council meetings.

A Draft EIS was subsequently produced and made available for a 45-day public comment period announced in the Federal Register on October 5, 2018 (83 FR 50363). During the comment period, six comment letters were received from federal and state agencies, environmental organizations, and the general public. Primary issues raised in the comments related to corrections or additions on a variety of topics regarding the environmental impact analysis, and suggested improvements to figures. Chapter 10 of the Final EIS contains a summary of comments received on the draft EIS and NMFS' responses. Chapter 10 and section 1.1.2 of the EIS describes and summarizes the changes that were made to the Draft EIS in response to comments.

The Final EIS was subsequently produced and made available for a 30-day public review period announced in the Federal Register on August 16, 2019 (84 FR 41818). Due to a software error, the public review period was not announced in the Federal Register immediately after the FEIS was made available to the public on July 25, 2019. The U.S. Environmental Protection Agency waived a portion of the public review period, closing the period on September 6, 2019.

### **IV. Environmentally Preferable Alternative(s)**

Subject Area 1, Alternative 1.b., the Oceana Alternative, the No Action Alternative from Subject Area 2, (also Combination 2, Table 1), and Subject Area 3, Alternative 3.a. comprise the environmentally preferred alternative. This combination would offer the most protection to the biological and physical environment and therefore the lowest level of environmental impact in comparison to any of the alternatives, including the No Action Alternative.

### **V. Results of Consultations**

The proposed action will have a positive impact on essential fish habitat (EFH), therefore, no EFH consultation was required and none was prepared, as described in section 7.1.11 of the EIS.

NOAA Fisheries determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management programs of Washington, Oregon and California. This determination was submitted on September 28, 2018, for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. The state agencies agreed with this determination.

No new Endangered Species Act (ESA) consultations were conducted on this action because this action is not anticipated to change the conclusions of prior consultations, or would have no effect on a protected species. This action does not represent irreversible and irretrievable commitment of resources pursuant to 7(d) of the ESA. See additional discussion about compliance with the ESA in section 7.4 of the EIS.

## **VI. Mitigation and Monitoring**

Implementation of this action is not expected to result in significant environmental harm. Therefore, no mitigation measures specific to Amendment 28 are proposed. The EFH requirements of the Magnuson-Stevens Act are mitigation measures to protect habitat essential for the long-term sustainability of U.S. fisheries. Section 303(a)(8) of the Magnuson-Stevens Act requires councils to identify and describe the "waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity" and to "minimize to the extent practicable the adverse effects of fishing on such habitat." NMFS further defines adverse effects as those effects that are more than minimal and not temporary (50 CFR 600.815(a)(2)(ii)). This action examined those requirements for Pacific Coast groundfish. As such, this action is, in and of itself, a mitigation measure for the impacts to habitat from all the fishery management actions taken by the Council and is an overall benefit to the environment.

This action includes measures that mitigate negative environmental impacts of fishing. New area closures for bottom trawl gear, when combined with existing closures, protect groundfish essential fish habitat to the maximum extent practicable. New management measures (Block Area Closures) provide adaptive management to address uncertainty in the environmental impacts of reopening historically important fishing grounds off the coasts of Oregon and California that have been closed by the trawl Rockfish Conservation Area (RCA) for over 15 years.

## **VII. Decision and Rationale for Decision**

NMFS will implement Combination 4 that comprises: Subject Area 1, Alternative 1.h; and Subject Area 2, Alternative 2.d. NMFS will also implement Alternative 3.a. These alternatives strike a balance between protections of EFH and deep-water habitats with sustainable commercial fishing opportunities. Specific decision points and rationale are discussed below.

### *Subject Area 1*

All three alternatives would increase habitat and ecosystem protections over the amount currently being protected. While the environmentally preferred alternative in Subject Area 1 (Alternative 1.b) would provide substantially greater benefits than Alternative 1.a for habitat, it would also have the greatest negative socioeconomic effects on bottom trawl fisheries by displacing more fishing effort to protect EFH. In particular, it would have disproportionate negative socioeconomic effects on fishing communities in Eureka, California, as discussed in section 4.2.2.5 and shown in Table 4-15, of the EIS. Alternative 1.a would not change EFH protections off the northern and central Oregon coast and in the Southern California Bight. Alternative 1.h, the Preferred Alternative, took a coast-wide approach, adopting and adapting EFHCAs from the other Subject Area 1 alternatives in a manner that was more fair and equitable

across affected fishing ports and states. Alternative 1.h, the Preferred Alternative, offers the best balance between EFH protection and socioeconomics.

### *Subject Area 2*

While the environmentally preferred alternative in Subject Area 2 (the No-Action Alternative) would continue to offer the most protection to the biological and physical environment, it restricts access to productive and important fishing grounds, constrains flexibility and efficiency, and maintains a management strategy that relies on pre-catch share regulations (prior to annual catch limits, individual accountability, and monitoring) and that was designed to facilitate rebuilding of stocks that are now largely rebuilt.

The action alternatives consider re-opening these historically productive fishing areas and are anticipated to benefit industry (see section 4.2.2.8 of the EIS), increase efficiency and flexibility in management of the groundfish bottom trawl fishery, and have positive socioeconomic effects.

Both Subject Area 2 alternatives would negatively affect fish and protected resources; however, the magnitude is difficult to predict. However, other measures are in place under the FMP, along with the introduction of Block Area Closures (BACs), to mitigate the magnitude of negative impacts. Neither alternative is likely to result in overfishing fish resources or jeopardy to protected species or their designated critical habitat.

Neither Alternative 2.c nor Alternative 2.d, the Preferred Alternative, consider re-opening the trawl RCA within the U&As off the northern and central Washington coast because changes to the trawl RCA within these U&As may affect the tribes' abilities to exercise their treaty rights, and was therefore not considered at this time. Alternative 2.d, the Preferred Alternative, maintains the No-Action Alternative trawl RCA off southern Washington because the changes adjacent to the U&As need to be made balancing the U.S. trust responsibilities to the treaty tribes.

Additionally, yelloweye rockfish, whose stock status is improving but is still managed under a rebuilding plan, is caught with bottom trawl gear most often off the Washington coast. Therefore, the Preferred Alternative, re-opens the trawl RCA only off Oregon and California. BACs can be used to close a variety of depths and latitudes to bottom trawl fishing to meet a variety of objectives in the FMP. BACs are designed to be more dynamic, flexible and timely than the trawl RCA.

### *Subject Area 3*

Alternative 3.a will protect deep-water habitats, including deep-sea coral, from potential future negative impacts of bottom-contact fishing. This alternative is anticipated to have no socioeconomic effects because no fishing will be displaced by the new deep-water closure.

### *Decision*

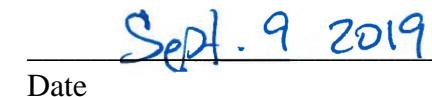
Through the EIS and the documentation in this ROD, NMFS considered the objectives of the proposed action and analyzed a reasonable range of alternatives that adequately address the objectives of the proposed action, and the extent to which the impacts of the action could be

mitigated. NMFS also considered the combined effect of the three subject areas and the cumulative effects of other past, present, and reasonably foreseeable future actions.

NMFS also considered public and agency comment received during the EIS scoping and review or environmental harm from the action.



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Date