

NMFS REPORT ON AUTHORITIES FOR RULEMAKING RELATED TO ESSENTIAL FISH  
HABITAT AND ROCKFISH CONSERVATION AREA DISCUSSION FROM APRIL 2015  
COUNCIL MEETING

During the Pacific Coast groundfish essential fish habitat (EFH) amendment scoping process, including Rockfish Conservation Areas (RCAs) and Area Adjustments, the Council considered sixteen issues relating to groundfish EFH, RCA adjustments, and other management measures. The Council requested that, for each issue that was advanced, NMFS identify the appropriate authority for rulemaking, and provide a report to the Council at the June 2015 meeting.

This report addresses items 1 through 11 from the Decision Summary Document of the Pacific Fishery Management Council April 2015 meeting. It should be noted that it is too early in the process to commit to a specific rulemaking process; as we proceed through decision-making on these issues changes may be necessary. Under each item, we describe each action to be taken, the regulatory authority for doing so, and process that will be required.

1. Description and Identification: Habitat Components
  - a. Action: Revise Appendix B: Pacific Coast Groundfish Essential Fish Habitat
  - b. Authorities: MSA §305(b)(1) and 50 CFR 600.815(a)(1)
  - c. Process: This appendix can be revised without amending the FMP. This could be done concurrently with the FMP amendment to gain efficiency.
  
2. Description and Identification: Spatial Extent
  - a. Action: Consider modifying the spatial extent of groundfish EFH.
  - b. Authorities: The regulatory pathway for modifying the spatial extent of EFH would be accomplished under MSA §305(b)(1) and 50 CFR 600.815(a)(1). However, there is no new information upon which to base changes to the spatial extent of EFH. One proposal included closing waters deeper than 3500 m to bottom trawl gear. Because this area is beyond the depth range of any Council-managed species of groundfish, the EFH authority cannot be used. Therefore, we evaluated the use of the available discretionary authorities under §303(b) the MSA. Two of these authorities, §303(b)(2)(A) and §303(b)(12) require a relationship to the managed fishery. In 2006, NMFS disapproved the closure of these waters to bottom trawl gear by Amendment 19 because any management measures must be “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,” as well as consistent with the national standards, and other provisions of the Act [16 U.S.C. §1853(a)(1)].

When this provision of Amendment 19 was disapproved, NMFS had little to no information regarding the value of the area beyond the 3500 m contour to the groundfish fishery and had not identified a link between impacts to areas deeper than 3500 m and the conservation and management of that fishery (Mary 11, 2006, 71 FR 27410). Although §303(b)(12) was added to the MSA in 2007, any measures implemented under this authority must meet the same standard. To our knowledge,

there is no new information that would indicate that these two authorities can be used, at this time, to prevent bottom trawl gear in waters deeper than 3500 m.

A third discretionary authority, MSA §303(b)(2)(B), allows the Council to “designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas.” This authority was added in 2007 to enhance ecosystem protection and does not require a link between zones where deep-sea corals are identified, or modelled, and Council-managed species or fishery populations.

It appears that §303(b)(2)(B) is the only authority available to the Council to prohibit bottom trawl gear in waters deeper than 3500 m. However, we do not know, at this time, the extent of deep-sea coral distribution in these waters.

- c. Process: Use of the §303(b)(2)(B) discretionary authority will require an FMP amendment, Secretarial approval, compliance with NEPA, and proposed/final rulemaking.

3. Adverse effects of fishing (MSA and non-MSA) and minimization measures

- a. Adverse effects of fishing (MSA and non-MSA)
  - Action: Revise Appendix C, Part 2: The Effects of Fishing on Habitat: West Coast Perspective
  - Authority: 50 CFR 600.815(a)(2)(i)
  - Process: This appendix can be revised without amending the FMP. This could be done concurrently with the FMP amendment to gain efficiency.
- b. Fishing activity restrictions and minimization measures (MSA only)
  - Action: Revise the management measures that minimize the adverse effects of MSA fishing on EFH. These measures are identified in the FMP and Appendix C
  - Authorities: There are two authorities available to the Council:
    - Mandatory authority at MSA §303(a)(7) and EFH authority at 50 CFR 600.815(a)(2)(ii) to minimize, to the extent practicable, adverse effects from fishing activity
    - Deep-sea coral discretionary authority at MSA §303(b)(2)(B) (see item 2(b) above). Use of this authority does not require a link between Council-managed species and zones of deep-sea corals. Given the uncertain relationship between Council-managed groundfishes and deep-sea corals, the Council may wish to consider this authority to protect these corals.
  - Process: Revisions to management measures, using either of these authorities, require an FMP amendment, Secretarial approval, compliance with NEPA, and proposed/final rulemaking.

4. Non-fishing effects and conservation measures
  - a. Action: Revise Appendix D: Nonfishing Effects on West Coast Groundfish Essential Fish Habitat and Recommended Conservation Measures.
  - b. Authority: 50 CFR 600.815(a)(4)
  - c. Process: This appendix can be revised without amending the FMP. This could be done concurrently with the FMP amendment to gain efficiency. NMFS is currently working to update this information.
  
5. Cumulative impacts analysis
  - a. Action: Include the cumulative impacts analysis as part of the required NEPA analysis.
  - b. Authority: 50 CFR 600.815(a)(5)
  - c. Process: This will be part of a NEPA analysis.
  
6. Conservation and enhancement:
  - a. Action: The Council determined that this issue would not be advanced. However, conservation and enhancement measures related to nonfishing activities will be included in revisions to Appendix D under issue #5.  
NMFS concurs with the direction provided by the Council
  
7. Prey species:
  - a. Action: Update the major prey species in Appendix B.
  - b. Authority: 50 CFR 600.815(a)(7)
  - c. Process: This appendix can be revised without amending the FMP. This could be done concurrently with the FMP amendment to gain efficiency.
  
8. Habitat areas of particular concern:
  - a. Action: The Council determined that this issue would not be included in the scope of issues to be advanced.  
NMFS concurs with the direction provided by the Council
  
9. Research and Information Needs
  - a. Action: Move prioritized research recommendations from the FMP into the appendix to allow for future updates without an FMP amendment.
  - b. Authority: 50 CFR 600.815(a)(9)
  - c. Process: Research and Information Needs are in both the FMP and Appendix B, Part 5, although the information in the appendix is far more detailed. Removing the section from the FMP will require an FMP amendment, Secretarial approval, and compliance with NEPA.
  
10. Review and Revise Process
  - a. Action: Develop a more detailed description of the process in an accompanying document, e.g., through a COP.
  - b. Authority: 50 CFR 600.815(a)(10)
  - c. Process: Revising this process would require an FMP amendment, Secretarial approval, compliance with NEPA, and proposed/final rulemaking.

11. Comprehensive trawl RCA adjustments

- a. Action: Retain comprehensive RCA adjustments within the scope of EFH issues to be advanced.
- b. Authority: 50 CFR 660, 16 U.S.C. 1801 *et seq.*
- c. Process: Comprehensive RCA reform, depending on the extent of reform, may require an FMP amendment, Secretarial approval, compliance with NEPA, and proposed/final rulemaking process.

PFMC  
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