

NATIONAL MARINE FISHERIES SERVICE REPORT  
THE USE OF MSA § 303(b) AUTHORITIES TO PROTECT WATERS > 3500 M  
FROM FISHING GEAR IMPACTS

At the June 2015 Council meeting, the Council requested that NMFS determine if the discretionary authorities under § 303(b) of the MSA can be used to protect waters deeper than 3500 m from the effects of bottom contact gear. These waters are beyond the depth range of any species currently managed under the groundfish FMP.

In this report, NMFS presents a possible approach, for Council discussion, to protect those waters from the effects of unregulated use of bottom contact gear under the MSA § 303(b) authorities. This approach would apply to Alternative 11b as described in Agenda Item H.8, Supplemental Attachment 5, September 2015, Addendum to Draft Range of Alternatives for modifying Pacific Coast groundfish essential fish habitat. It also describes the considerations that went into developing this alternative.

**Proposed alternative:**

Closure of waters deeper than 3500m within the EEZ to fishing with bottom contact gear, with a provision that a permit owner or vessel owner initiate a groundfish EFP request through the Council process in the event that he/she wants to fish using bottom contact gear in these waters. Fishing with bottom contact gear outside of an EFP could only be authorized through an FMP amendment and changes in regulation.

The groundfish FMP defines bottom contact gear as “fishing gear designed or modified to make contact with the bottom. This includes, but is not limited to, beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom. Gear used to harvest bottom dwelling organisms (e.g. by hand, rakes, and knives) are also considered bottom contact gear for purposes of this subpart.”

Fixed gear (*anchored non-trawl gear*) means the following gear types: longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

**Considerations for alternative:**

- The management regime of the groundfish FMP applies to: 1) the U.S. EEZ of the northwest Pacific Ocean that lies between the U.S. Canada border and the U.S.-Mexico border and 2) all foreign and domestic commercial and recreational vessels which are used to fish for groundfish in the management area.
- Given the lack of information about bottom-dwelling species and their associated habitats in these waters and the lack of current interest in using bottom contact gear in these deep waters, NMFS believes it is appropriate to analyze and consider this alternative that would

prevent potential adverse effects from any unregulated commercial use of bottom contact gear, should it occur.

- This alternative is similar to the recent Council action on protecting unfished and unmanaged forage fish species. Under that action, no new directed fisheries can begin for these species without a Council process to develop an EFP, and no long-term directed fisheries for these species would be possible without an FMP amendment to specify the targeted species as an FMU species and to meet MSA requirements for FMU species, which include: developing harvest specifications, identifying EFH for the species and providing gear specifications for the fishery.
- NMFS reviewed the final rule that implements the Fishery Management Plan for Fish Resources of the Arctic Management Area and believes that it is appropriate to analyze and consider a similar precautionary approach. In the Arctic FMP, the agency and North Pacific Council closed the Arctic area for commercial fishing, recognizing that more information is necessary to determine the appropriate management framework. The Arctic FMP establishes “a precautionary, ecosystem-based approach to fisheries management in the Arctic Management Area.”
- This alternative differs from the approach that was disapproved in 2007 because it has a different focus (bottom contact gear) and has a clear recognition that additional information, both biological and technical, could lead to interest in fishing these waters.
- NMFS took into account public comments about the use of MSA discretionary authority (as noted in H8 Attachment 1) and considers this an appropriate approach to consider. As noted in H8 Attachment 1, “MSA 303(b)(2)(A) allows the Council to designate zones where, and periods when, fishing is limited, not allowed, or allowed only by specific types of gear. This authority was established when the MSA was reauthorized in 1996. In addition, MSA 303(b)(12) allows the Council to implement management measures to conserve target and non-target species and habitats, after considering the variety of ecological factors affecting fishery populations. This authority was established when the MSA was reauthorized in 2007. NMFS is currently evaluating the applicability of these last two authorities to waters deeper than 3500m”
- The requirement for an EFP allows the Council the opportunity to assess the impacts of the proposed fishery on currently managed stocks, ecosystem component species, and the marine ecosystem before that fishery begins. Issuance of an EFP by the Council is subject to the compliance with the requirements of NEPA.