

## RECOMMENDATIONS AND GUIDANCE ON FMP AMENDMENT 28

The National Marine Fisheries Service (NMFS) would like to thank the Project Team for their commendable work to prepare information that will support the Council decision-making on Amendment 28, revisions to Essential Fish Habitat Conservation Areas (EFHCAs), changes to the trawl Rockfish Conservation Area (RCA) and using discretionary authorities under the Magnuson-Stevens Conservation and Management Act (Magnuson-Stevens Act) to protect deep-water habitats. NMFS offers the following guidance and recommendations for Council consideration.

### **Essential Fish Habitat Conservation Areas**

The Magnuson-Stevens Act requires that we “minimize to the extent practicable adverse effects” on Essential Fish Habitat (EFH) caused by fishing, and “identify other actions to encourage the conservation and enhancement of such habitat.” 16 U.S.C. 1853(a)(7), 1855(b). This requirement is the primary purpose of Amendment 28, and the preliminary draft Environmental Impact Statement (EIS) analyzes a wide range of alternatives to accomplish this goal. In selecting final preferred alternatives to revise the EFHCAs, we remind the Council to ensure that the final preferred alternative is also consistent with the other Magnuson-Stevens Act provisions, including National Standards 1, 2, 7, 8, and 9. These standards speak specifically to preventing overfishing, using the best scientific information available, minimizing costs and avoiding unnecessary duplication, taking into account impacts to fishing communities, and minimizing bycatch and bycatch mortality to the extent practicable.

NMFS does not offer broad-scale comment on the alternatives considered in the preliminary draft EIS ([Agenda F.3.a, Project Team Report 1](#)) because there are number of combinations of alternatives that the Council may choose to meet the purpose and need for Amendment 28. However, NMFS particularly supports Council consideration of a few polygons, described in Table 1, because they correct existing regulatory definitions, or protect unique habitats. In highlighting these polygons, NMFS does not intended to imply opposition to other EFHCA proposals or alternatives.

Table 1. Polygons that NMFS supports Council consideration of, and our rationale.

Alternative & Reference	Polygon Name & Location	Rationale
1.f, <a href="#">Agenda F.3.a, Project Team Report 1</a> (Section 2.2.6)	Potato Bank, Southern California	This alternative would more accurately place the bottom trawl closure polygon over the Potato Bank. Relocating this polygon is consistent with the intent of establishing this area closure under FMP Amendment 19.
1.b, Agenda Item F.3.a, Supplemental Project Team Report 2 (Overlapping Polygons)	Russian River; Central California	This polygon would be most responsive to new habitat mapping in the area, indicating presence of hard substrate in areas that are encompassed by the Russian River but are not within “The Football” polygon in Alternative 1.a, Collaborative.
1.b, Agenda Item F.3.a, Supplemental Project Team Report 2 (Overlapping Polygons)	Heceta Bank & Heceta Bank West; Central Oregon	The Alternative 1.b, Oceana et al., and Alternative 1.c, Midwater Trawlers Cooperative, all propose expansions to the existing EFHCA around Heceta Bank. The expansions in Alternative 1.b would be most protective of the unique habitat characteristics around Heceta Bank.

### Salmon Bycatch Mitigation and Trawl Rockfish Conservation Area Removal

NMFS recommends that the Council include fishery management tools that could be used to mitigate salmon bycatch in any final preferred alternative that removes all or part of the trawl rockfish conservation area (RCA). NMFS believes this could be accomplished under Alternative 2.c, which would give the Council and NMFS the ability to close areas of the coast, varying by depth and latitude, to meet a variety of fishery management needs (i.e. Block Area Closures, or BACs). NMFS supports the request made in the preliminary draft EIS for additional Council guidance on how BACs would be considered and recommended in the Council process and implemented by NMFS inseason or preseason.

There is significant uncertainty about how the Council’s preliminary preferred alternative (PPA) (removing trawl RCA off Oregon and California, option to implement BACs, as needed) would affect listed salmon. The 2017 salmon Biological Opinion ([Agenda Item H.5, Attachment 1, March 2018](#)), per Council guidance, considered the Council’s PPA as part of the “proposed action” when consulting. The 2017 Incidental Take Statement (ITS) requires the Council and NMFS to develop and implement mitigation measures to reduce bycatch levels if the trawl RCA removal results in more than a 25 percent increase in salmon bycatch rates from those considered in the

Biological Opinion (Term and Condition 4a). Additionally, the ITS specifically states that in regards to removing the trawl RCA off Oregon and California, “NMFS and the Council should proceed cautiously and include measures to ensure the [salmon] impacts are consistent with the analysis in this opinion.”

BACs, as a routine inseason management tool, could be used to respond to new bycatch information consistent with the terms and conditions of the Biological Opinion. NMFS notes that the Council would need to consider salmon bycatch rates at each Council meeting under the inseason agenda item to assess whether BACs should be implemented due to a greater than 25 percent increase in salmon bycatch rates from the rates considered in the 2017 Biological Opinion. The ITS also requires the Council and NMFS to monitor salmon bycatch and take action to mitigate bycatch if mortality of salmon approaches or is projected to approach or exceed the guidelines.

NMFS also would like to acknowledge that West coast fisheries have successfully demonstrated their ability to voluntarily avoid high-bycatch areas or use selective fishing gear that may reduce bycatch. NMFS will continue to support these voluntary efforts. However, if information becomes available indicating that the salmon bycatch does not reflect the assumptions in the analysis in the 2017 Biological Opinion, the Council and NMFS may need to develop additional management tools.

### **Discretionary Authority**

NMFS supports Council consideration of the use of Magnuson-Stevens Act discretionary authority, consistent with Section 303(b), to close the area seaward of 3,500 meters to fishing with bottom-contact gear.

### **Revised Tribal Usual and Accustomed (U&A) Fishing Area Boundaries**

The metrics presented in the preliminary draft EIS use the tribal U&A fishing area boundaries established by the U.S. District Court for the Western District of Washington in *United States v. Washington*, 2:09-sp-00001-RSM, (W.D. Wash. Sept. 3, 2015). The district court, however, recently issued an order on March 5, 2018 revising the western U&A boundaries for the Quileute and Quinault Tribes, pursuant to a remand by the U.S. Court of Appeals for the Ninth Circuit in *Makah Indian Tribe v. Quileute Indian Tribe*, 873 F.3d 1157 (9th Cir. 2017). This litigation is still ongoing and could result in additional changes to the tribal U&A fishing area boundaries.

The Council excluded changes to the EFHCAs and trawl RCA inside the tribal U&A fishing areas, therefore the proposed EFHCAs, trawl RCA, and BACs that overlapped the U&A fishing areas were “clipped” and limited to areas that lie outside the area. The 2018 U&A fishing area boundaries shrink the spatial extent slightly, exposing parts of several potential EFHCAs, trawl RCA, and BACs. Since the advance briefing book deadline, NMFS prepared updated maps of the Washington coast showing how the revised boundaries would affect the analyses (Figures 1-4). Given the timing of the district court issuance of the revised boundaries and the ongoing status of

the litigation, the Project Team did not re-run and present revised metrics that incorporate the 2018 revised tribal U&A fishing area boundaries in the preliminary draft EIS.

### **Amendment Process**

NMFS is committed to working to quickly implement Amendment 28. There is still a significant amount of work left to complete the EIS, which will ultimately support NMFS rulemaking. Completing the draft EIS will require continued engagement and effort from members of the Project Team. In addition, NMFS hopes to engage the Council in finalizing the EIS and the FMP amendment process at the September 2018 and November 2018 meetings. Council input at these meetings may be necessary to: 1) review and respond to comments on the published draft EIS; 2) amend the final action, if necessary, in response to those comments; and 3) review draft regulations and FMP language. NMFS is working on a process memorandum to describe and identify leads for the remaining tasks, as well as a proposed timeline, and intends to finalize this memorandum with the Executive Director (or designee) and Science Center leadership after the April 2018 meeting.

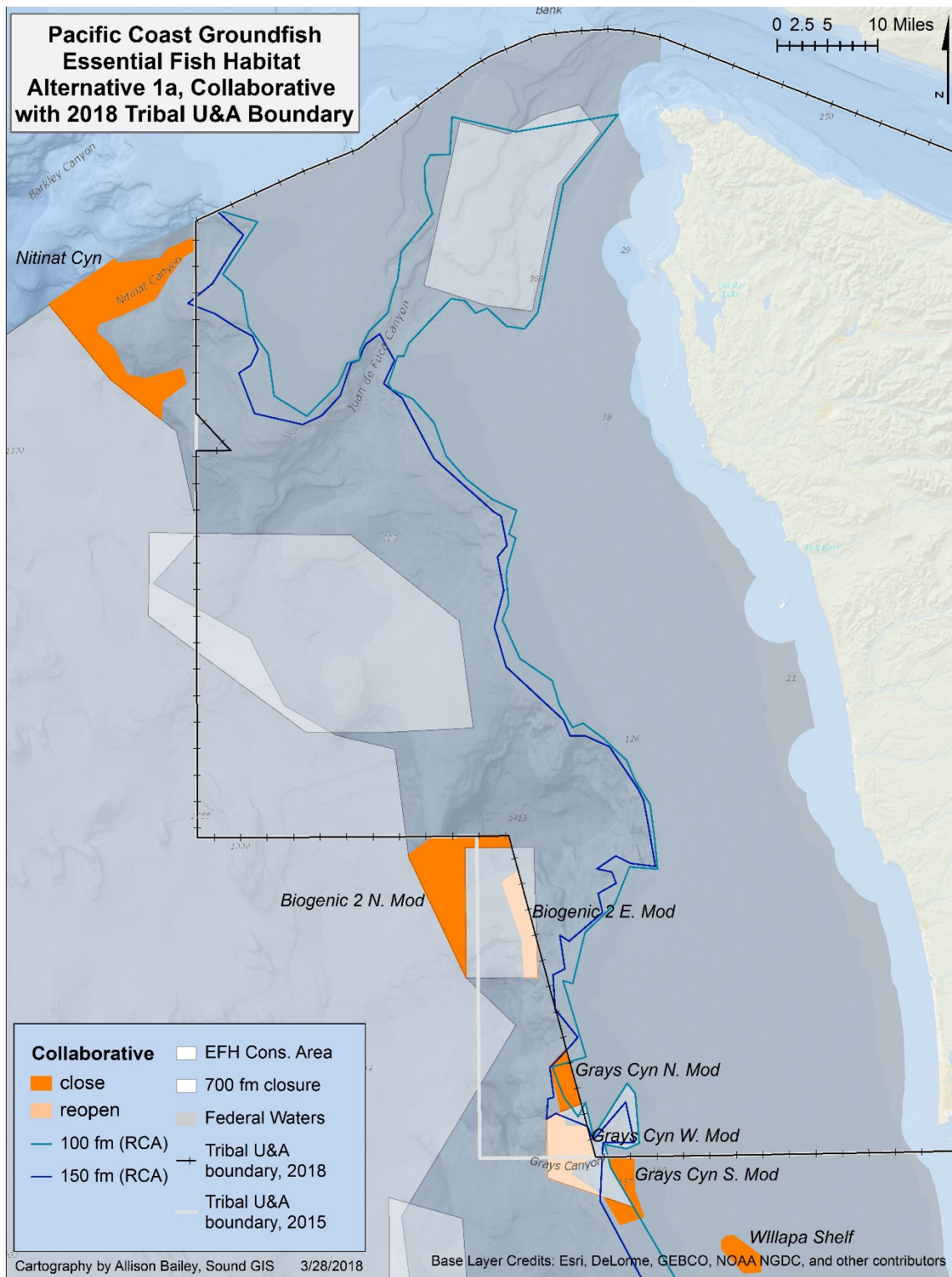


Figure 1. Comparison of Alternative 1.a, Collaborative, polygons relative to the 2015 and 2018 tribal U&A fishing area boundaries.



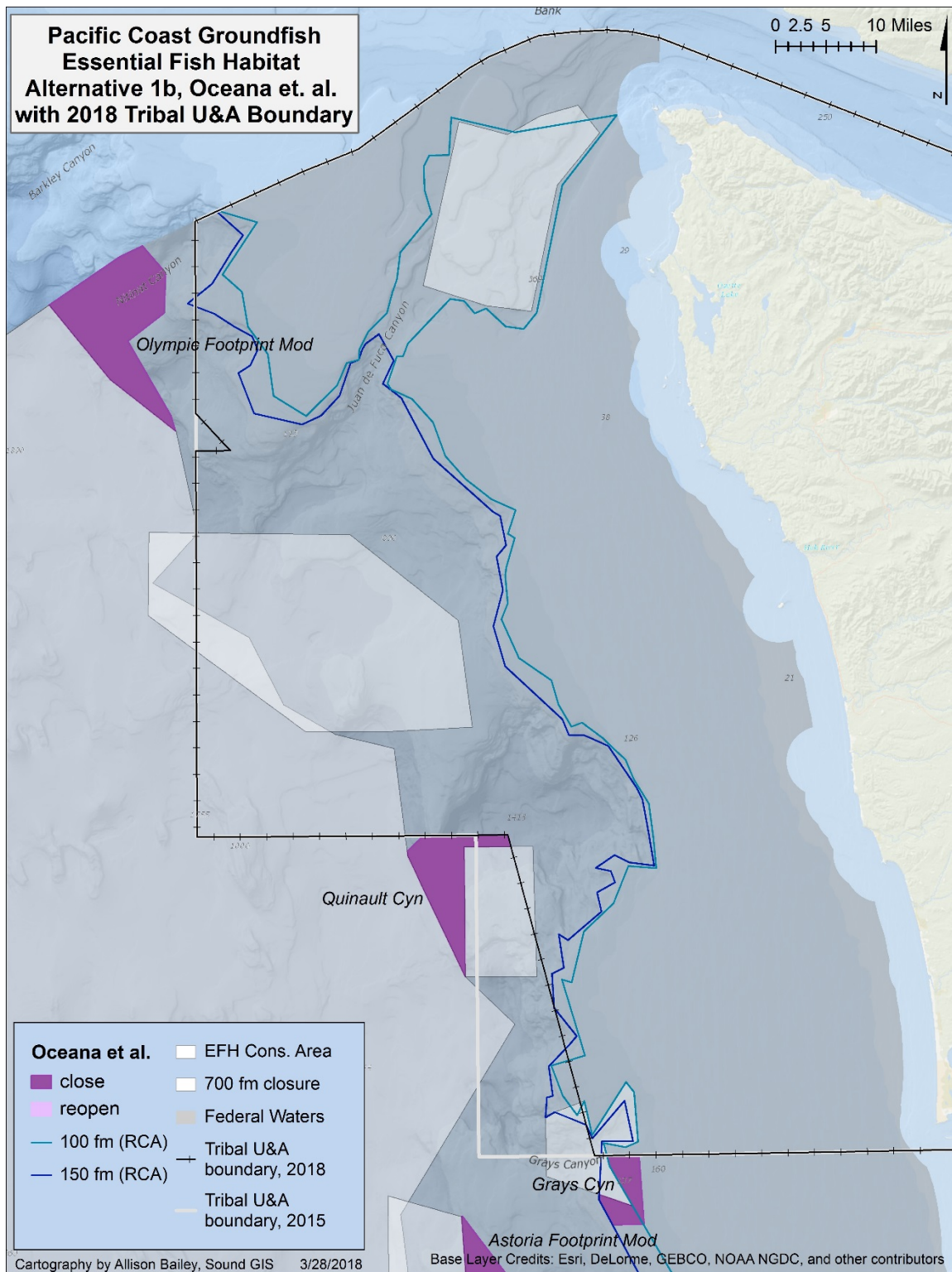


Figure 2. Comparison of Alternative 1.b, Oceana, et al., polygons relative to the 2015 and 2018 tribal U&A fishing area boundaries.

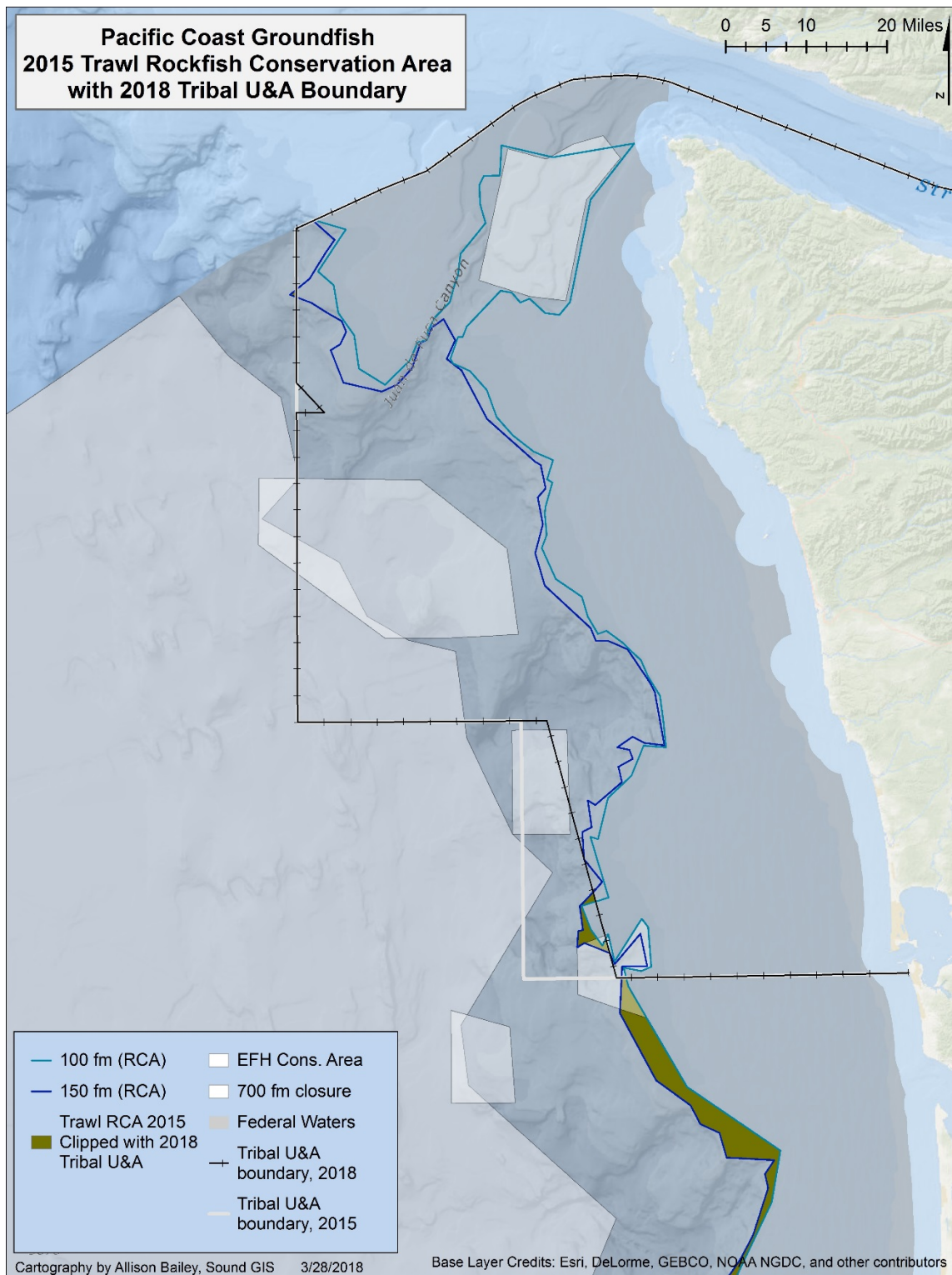


Figure 3. Comparison of Alternative 2.a, Remove Trawl RCA, relative to the 2015 and 2018 tribal U&A fishing area boundaries.

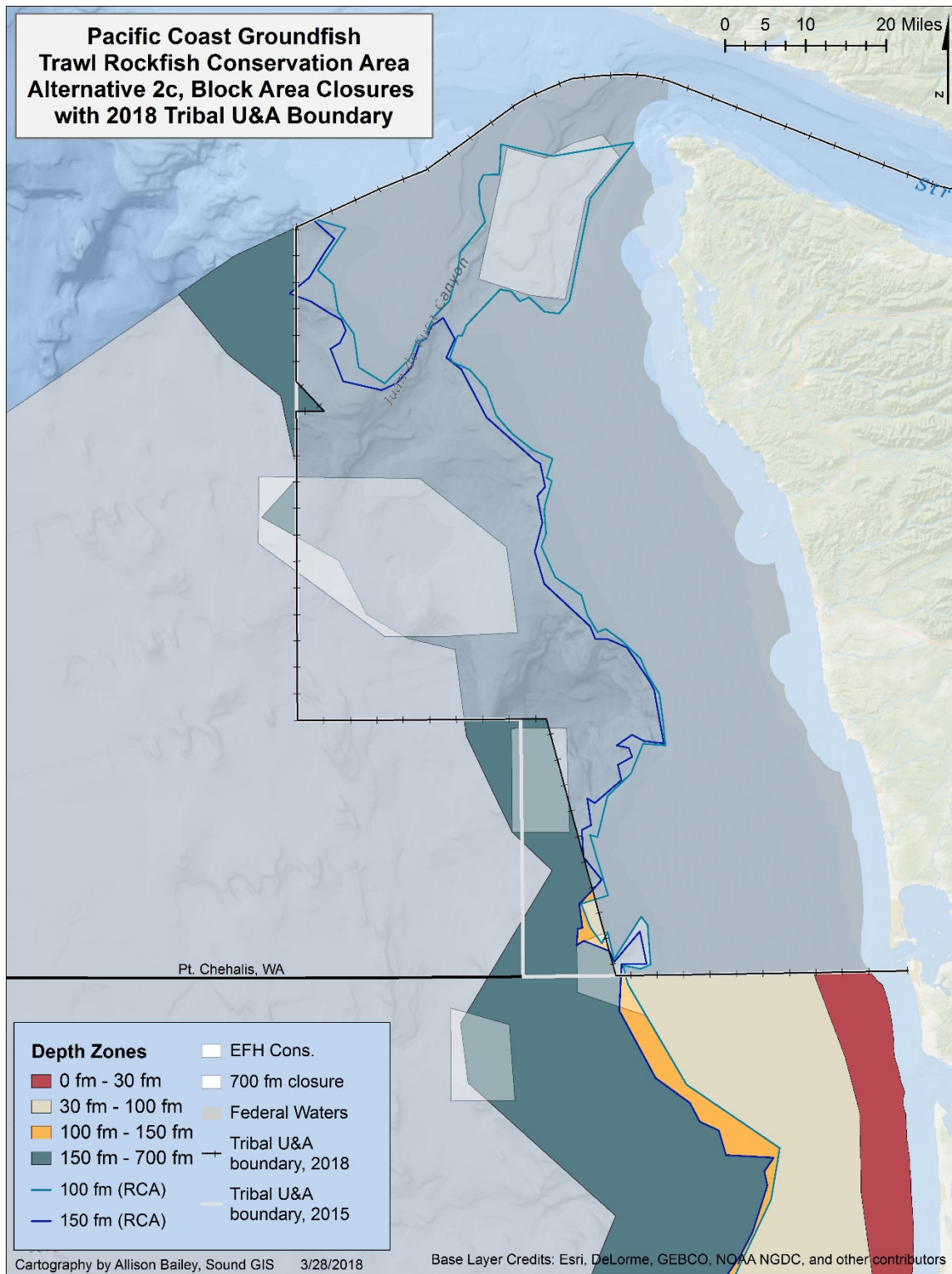


Figure 4. Comparison of Alternative 2.c BACs polygons relative to the 2015 and 2018 tribal U&A fishing area boundaries.