

August 24, 2018

Phil Anderson, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

RE: I.2 Groundfish Amendment 28, EFH-RCA Implementation Update

Dear Chair Anderson and Council members:

Oceana commends the Pacific Fishery Management Council and National Marine Fisheries Service (NMFS) for its thorough and deliberate essential fish habitat (EFH) review and we commend your set of unanimous final actions taken in April 2018 on Groundfish Amendment 28. All combined, the Council's final preferred alternatives for EFH conservation areas, trawl rockfish conservation areas, and establishment of the deep-water conservation area off California, significantly advance the conservation and enhancement of EFH and deep-sea ecosystems while simultaneously increasing bottom trawl fishing opportunities. It is our view that the Council process, hard work, and contributions by many people involved, including conservation NGOs, the fishing industry, members of the public, West Coast Sanctuaries, Tribes, NMFS and Council staff, made for a successful, unanimous decision heralded as a "grand bargain" and a "win-win" for habitat conservation and sustainable fisheries.¹

We appreciate the work of NMFS and Council staff in moving the Council's final action toward implementation. With respect to the draft proposed Fishery Management Plan (FMP) amendment language and NMFS update on Amendment 28 regulation development, we offer the following comments.

1. Oceana appreciates and concurs with the approach NMFS identified for drafting simple, enforceable regulatory definitions for EFH conservation area (EFHCA) boundaries, including using the existing Magnuson-Stevens Act regulatory definition of the Exclusive Economic Zone to describe EFHCA boundaries that match state water boundaries.
2. We note in the NMFS report, NMFS intends to define the *Outer Soquel Canyon* and *West of Sobranes Point* EFHCAs as individual conservation areas.² However, these areas do not appear to be identified as new EFHCAs in section 6.8.5 of the draft FMP amendment.³ Also, we do not see reference to the *Spanish Canyon Line* adjustments (opening and closures) west of Pt. Delgada,

¹ E.g. Seattle Times (April 14, 2018). Conservationists, West Coast bottom fishermen embrace 'grand bargain'. Available: <https://www.seattletimes.com/seattle-news/conservationists-west-coast-bottom-fishermen-embrace-grand-bargain/>

² Agenda Item I.2a, NMFS Report 1 (September 2018). Available: https://www.pcouncil.org/wp-content/uploads/2018/08/I2a_NMFS_Rpt1_SEPT2018BB.pdf (Table 1).

³ Agenda Item I.2, Attachment 1 (September 2018). https://www.pcouncil.org/wp-content/uploads/2018/08/I2_Att1_FMP_Text_Changes_SEPT2018BB.pdf at 13-14.

California. We assume those changes will be reflected as changes to the adjacent 700-fathom isobath line. If so, we recommend this be noted in Section 6.8.6 of the Groundfish FMP (Bottom Trawl Footprint Closure) and in draft regulations. We encourage careful review of the FMP amendment, maps and regulatory language to ensure each of the new and modified EFHCAs identified by the Council at final action are properly identified and defined.

3. We are concerned by the proposed deletion of Section 7.3.2 in the FMP; “Process for Modifying Existing or Designating New HAPCs.” We understand the intent is to streamline the FMP and reference the EFH review process outlined in Council Operating Procedure 22 (which currently refers to sections in the FMP proposed for deletion). In doing so, useful information and public input into the process may be lost. EFH regulations state that “FMPs should outline the procedures the Council will follow to review and update EFH information.”⁴ We recommend outlining the process in the FMP and referring to finer details on committee duties and responsibilities in Council operating procedures, as appropriate.
4. We recommend retaining the phrase “at least every 5 years” instead of replacing it with “periodically” in FMP section 7.6 (page 27) to be consistent with EFH regulations stating that “a complete review of all EFH information should be conducted...at least once every 5 years.”⁵
5. Please provide guidance and clarification on the public review of amendments to the FMP appendices. As part of the April 2018 Groundfish Amendment 28 final action, the Council adopted the administrative alternatives described in Table 2 of the April 2018 Supplemental Project Team Report (Alts. 5b to 10b).⁶ This includes updates to Groundfish FMP Appendices B, C and D. Alternative 5b, for example, calls for an update to the “information in Groundfish FMP Appendix B of the FMP to reflect new information on Pacific Coast Groundfish life history descriptions, text descriptions of groundfish EFH, and major prey items.” We seek clarity on the process and timeline for these approved updates.

Oceana greatly appreciates the Council’s hard work to advance the conservation and enhancement of groundfish EFH and the protection of deep-sea ecosystems. Groundfish Amendment 28 will benefit the biodiversity of the deep-sea, preserve ancient groves of corals and sponges, and enhance the productivity of the many species of groundfish that use seafloor habitats. Thank you for your hard work and commitment to science, conservation and sustainable fisheries.

Sincerely,



Ben Enticknap
Pacific Campaign Mgr. and Sr. Scientist



Geoffrey Shester, Ph.D.
California Campaign Director & Sr. Scientist

⁴ 50 C.F.R. § 600.815(a)(10).

⁵ Id.

⁶ Available: https://www.pcouncil.org/wp-content/uploads/2018/04/F3a_Supp_Project_Team_Report2_Apr2018BB.pdf



Submitted via electronic mail

August 27, 2018

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RE: Agenda Item I.2: Proposed Groundfish FMP Amendment 28 Language

Dear Chair Anderson and Council Members,

Thank you for your consideration of the following comments regarding proposed Amendment 28 to the Groundfish Fishery Management Plan (“FMP”). We appreciate the Council’s adoption of a Final Preferred Alternative package for Amendment 28 that will grant new protections to over 140,000 square miles of unique, sensitive, and important marine habitats while enhancing fishing opportunities. This action marks an important milestone in fulfilling the Council’s responsibility to protect and enhance essential fish habitat (“EFH”) as well as using the Council’s discretionary authority to protect pristine deepwater habitat by prohibiting the use of bottom-contacting gear in the waters deeper than 3,500m.

Overall, we support the draft amendatory language provided in the Council’s briefing book for the September 2018 meeting. The language largely reflects the Council’s adoption of important new EFH revisions and deepwater habitat protections. It also contains useful clarifications of the Council’s authority to protect groundfish habitat, such as those in Sections 6.6.3 and 6.8. As a further clarification, we recommend that Section 6.2 be modified to reflect the Council’s ability to address multiple gear types in order to protect EFH. The current language only refers to bottom trawling.

We also appreciate the considerable work that staff put into developing simple, enforceable boundary definitions for EFH Conservation Areas. The National Marine Fisheries Service’s preferred approach of using the existing definition of the Exclusive Economic Zone boundary found in Magnuson Act regulations appears to be reasonable, straightforward approach.

We did identify several proposed changes in the draft amendatory language that would render the FMP inconsistent with governing regulations. First, the proposed amendment deletes Section 7.3.2, “Process for Modifying Existing or Designating New HAPCs.” Proposed changes to Section 7.6 of the FMP refer to Council Operating Procedure 22 (“COP 22”) to describe the process for review and revising EFH descriptions and identification. While these changes may

be aimed at streamlining the FMP, they remove useful information and render the process less accessible to the public.¹ Moreover, they conflict with governing regulations stating, “FMPs should outline the procedures the Council will follow to review and update EFH information.” 50 C.F.R. § 600.815(a)(10). Outlining the process for reviewing and revising EFH description and identification (including HAPCs) in the FMP itself ensures that it promotes better understanding of how the Council will perform these important tasks and how interested persons can participate in that process. Including the process in the FMP rather than in COPs also ensures that changes to the process are properly subject to public notice and comment required for FMP amendments. 16 U.S.C. §§ 1852(h)(3), 1854(a)(1)-(2). Second, the proposed change in Section 7.6 that replaces the phrase “at least every 5 years” with “periodically” is also inconsistent with governing regulations, which state that “a complete review of all EFH information should be conducted...at least once every 5 years.” 50 C.F.R. § 600.815(a)(10). We recommend the Council reject that change and retain the original language in order to comply with Magnuson Act regulations.

Finally, we ask the Council to confirm that methane seeps will be added to the description of EFH in Appendix B to the FMP and clarify the timeline for doing so.

Thank you for your continued work to implement critical habitat protections in Amendment 28. We look forward to the completion and promulgation of Amendment 28 this fall. Please do not hesitate to contact us with any questions.

Sincerely,



Andrea A. Treece
Staff Attorney, Oceans Program

¹ Additionally, COP 22 currently outlines a 5-year review process contemplated for 2011 and 2012.