

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE REPORT ON  
NATIONAL MARINE FISHERIES SERVICE PROPOSED RULE FOR AMENDMENT 28

The Washington Department of Fish and Wildlife (WDFW) would like to provide the following comments on the National Marine Fisheries Service's (NMFS's) proposed rule for Amendment 28, Groundfish Essential Fish Habitat Conservation Areas (EFHCAs). As the maker of the motion, we would like to describe our intent and the purpose behind the specific language and map used in the motion, and offer a transcription of the Council's discussion to support this purpose.

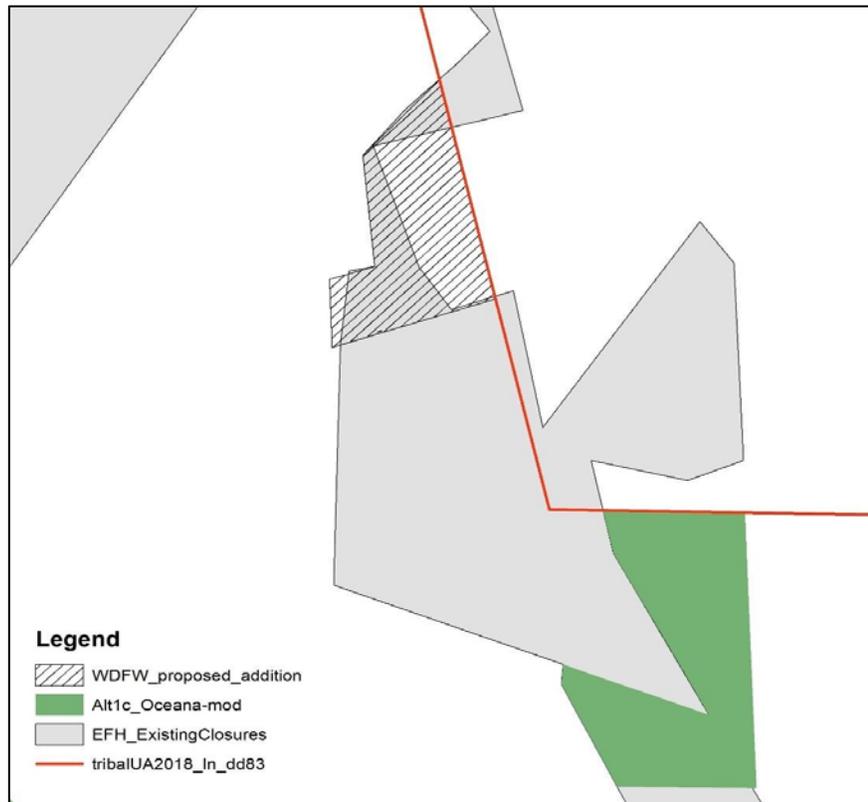
On March 5, 2018, the U.S. District Court for the Western District of Washington adjudicated the western boundaries for the Quileute Tribe's and Quinault Indian Nation's respective usual and accustomed fishing areas (U&As). Because this order was issued just prior to the Council's April meeting, Council staff and NMFS acknowledged that the EFH maps and shape files used in the analysis had not been updated. Therefore, the U&A boundaries that were in the Council documents in April 2018 did not accurately reflect the adjudicated western boundaries of the U&As at that time. In spite of this, however, Council staff provided direction to the Council to use maps in our motions as best as we could, and the map in Figure 1 is what accompanied the motion.

In consultation with the Coastal Treaty Tribes and the Quinault Indian Nation, in particular, we included the following in the WDFW motion on EFH conservation areas, which carried unanimously:

*I move that the Council adopt Grays Canyon EFHCA (northern portion) – original Alternative 1b, Oceana et al., inclusive of the area seaward of the adjudicated western boundary for the Quinault Indian Nation U&A, as described by the following coordinates and map:*

*Starting at: 46° 57' 50.04" N. lat., 124° 55' 35.37" W. long., then to  
46° 56' 41.65" N. lat., 125° 0' 14.6" W. long., then to  
46° 58' 9.98" N. lat., 125° 0' 22.41" W. long., then to  
46° 58' 23.49" N. lat., 124° 59' 15.29" W. long., then to  
47° 0' 58.42" N. lat., 124° 59' 37.58" W. long., then to  
47° 2' 32.87" N. lat., 124° 57' 22.13" W. long., then  
back to the point of origin.*

Figure 1. is the Grays Canyon Northern modification, as shown in WDFW motion, April 2018.



It is important to note that the initial part of the motion refers to the original Alternative 1b, Oceana et al., as the area that the Council was adopting. As such, the area covered in Alternative 1b was intended to be the underlying conservation area, which would extend eastward and adjoin the adjudicated western boundary for the Quinault Indian Nation U&A. Figure 2 displays the entire area covered by the original Alternative 1b.

As we did not have access to the shape file for the original Alternative 1b to display the full extent of the area in April 2018 and the tribal U&A boundaries had not been updated to reflect the most recent court decision, WDFW used the shape file provided by NMFS (Figure 1) in the motion to demonstrate that the intent was to have the eastern boundary of the Grays Canyon EFHCA adjoin the adjudicated western boundary for the Quinault U&A. This was clearly understood by Sheila Lynch, NOAA General Counsel, who predicated her question to me with a statement to that effect (see Attachment 1, which is a transcription of the Council’s discussion of the action). However, while the adjudicated western boundary for the Quinault’s U&A had not been mapped, given our collective understanding of the court order, we understood it to be eastward of the U&A boundary in the NMFS shape file, but not so far east as to be eastward of Alternative 1b.

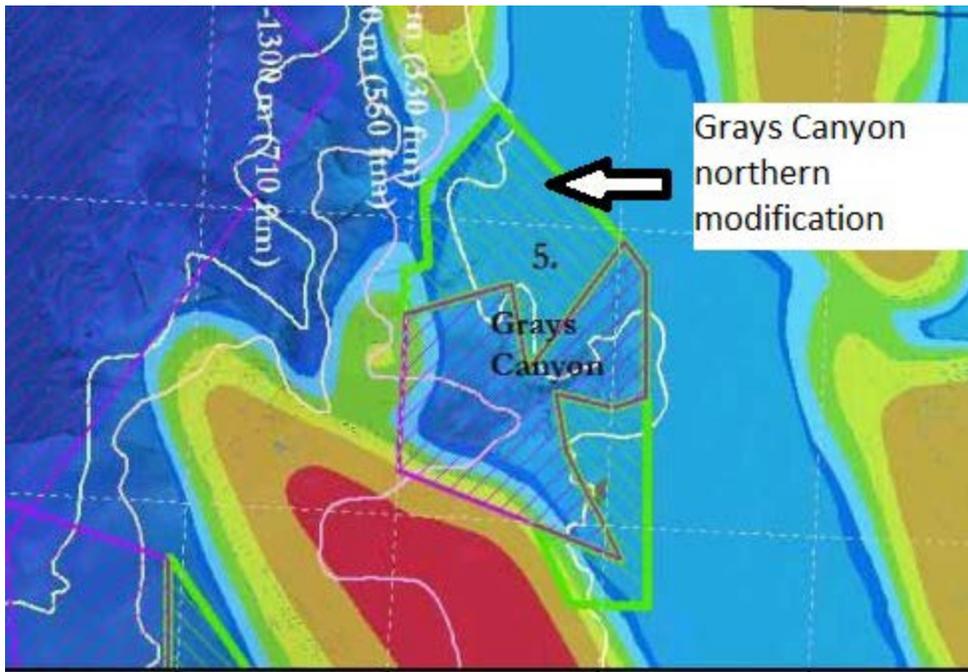


Figure 2. Illustration of the Grays Canyon northern and southern modifications (outlined in green) proposed by Oceana et al., that was considered under Alternative 1b ([Agenda Item F.5.s, EFH/RCA Project Team Report 1, April 2016](#)). Coordinates for the entire modified Grays Canyon from the Oceana et al. proposal are shown in Table 1.

Table 1. Longitude and latitude coordinates for a modified Grays Canyon EFHCA proposed by Oceana et al.

Grays Canyon	BT Closure, Grays Canyon EFH Conservation Area Modification	-124 48.39305448	46 54.440380236
		-124 48.39305988	46 54.440440572
		-124 48.36	46 54.450000006
		-124 48.39305448	46 54.440380236
		-124 47.7543495	46 47.358561966
		-124 51.52626552	46 47.330641824
		-124 53.32944882	46 49.916345184
		-124 49.79293164	46 59.596952148
		-125 0.00090534	46 56.790321144
		-125 0.20716668	46 58.296453528
		-124 59.05736058	46 58.495603074
		-124 59.52338106	47 1.020165654
		-124 55.99822764	47 3.633823308
		-124 55.83552012	47 3.694295706

In speaking to the motion, we provided the rationale for closing the proposed Grays Canyon EFH Conservation Area to bottom trawling, which was to protect the sensitive habitats within the area. Specifically, the Grays Canyon area includes observed locations of black coral, Gorgonian coral, and a large, unique glass sponge reef, which also includes methane seeps. There are over 2,800 sponge observations at the reef and a video analysis confirmed that rockfish were nine times more likely to be observed in frames with those sponges than without, confirming it as an important refuge for rockfish.

Given that the original Alternative 1b, extended considerably further east than the mapped western boundary of the Quinault U&A provided by NMFS, and that the full extent of the Grays Canyon EFHCA analyzed in Alternative 1b indicated a wide distribution of the habitat that the Council intended to protect with this motion, the purpose of adjoining the Grays Canyon EFH Conservation Area with the Quinault U&A was to avoid having a gap between the two that could be accessed by bottom trawl, which could negate the intent of the proposed bottom trawl closure. However, the area described in the NMFS proposed rule (Figure 3) leaves a significant gap—up to 2 nm at its widest point—of EFH that would be unprotected from bottom trawl activities. In doing so, this effectively reduces the area that had intended to be addressed by motion by as much as 50 percent.

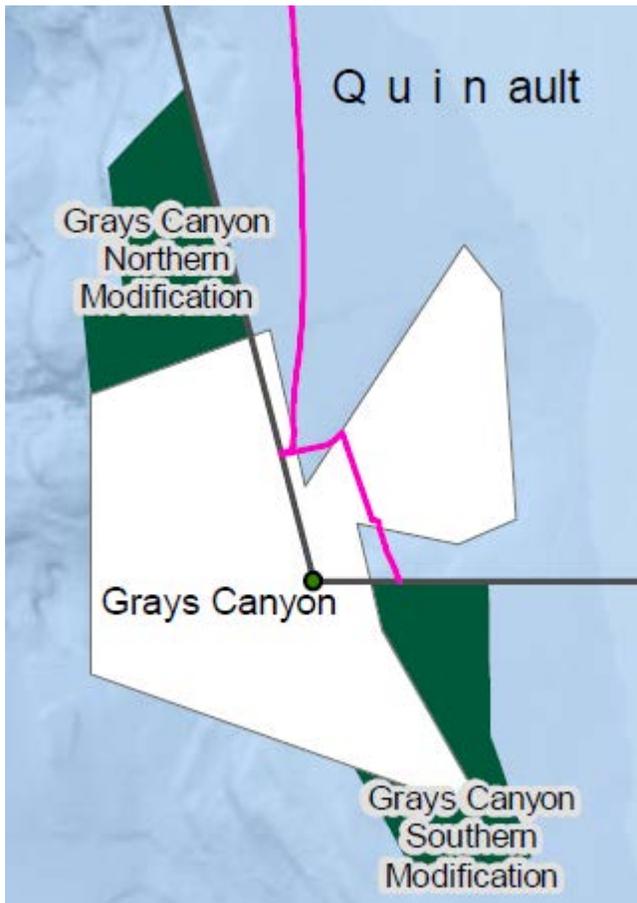


Figure 3. The existing Grays Canyon EFHCA (white) and the northern and southern modifications (green) in the Amendment 28 proposed rule. Gray straight line is the seaward boundary of the Quinault U&A boundary provided by NMFS at the time of the Council’s action. The pink, curved line is an approximation of the shoreline that extends offshore 30 nm.

WDFW believes that the Grays Canyon EFHCA that more accurately follows the direction provided in the motion (i.e., to use the original Alternative 1b. area as the underlying EFHCA) is described in Figure 4.

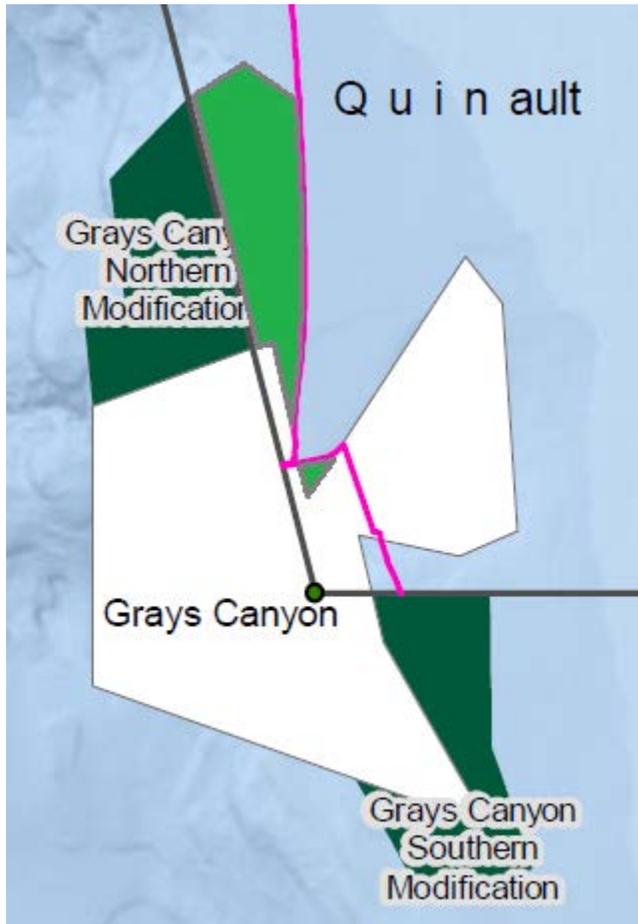


Figure 4. Connecting the latitude and longitude points from the Council motion with a line approximating the shoreline that extends offshore 30 nm. Dark green shaded area is based solely on the latitude and longitude coordinates from the Council motion. Light green shaded area would be the additional closed area if connected along the boundaries of the original Alternative 1b (approximation).

As part of the Council’s discussion, we also recognized that the litigation on the U&A boundaries was ongoing and that there may be further revisions to the western boundary. We clarified that the intent was for the Council’s actions to be compliant with current law. Mr. Anderson further clarified that, should a change in the western boundary for the Quinault U&A result in a desired modification to the EFHCA boundary, then the State and the Quinault Indian Nation could make that request to the Council (again, see Attachment 1).

Given that, our recommendation is to modify the Grays Canyon EFHCA using coordinates that approximate the area shaded in white, dark green, and light green in Figure 4. If, in the future, the adjudicated western boundary of the Quinault U&A is modified such that it overlaps with the Grays Canyon EFHCA, WDFW would welcome a discussion with the Quinault Indian Nation regarding whether to propose revisions to the Grays Canyon EFHCA to the Council.

Council Audio Record Transcription RE: Selection of Final Preferred Alternative for Groundfish EFH Conservation Areas and RCAs

04/09/2018

(1:31:35) Michele Culver, WDFW – motion, 2<sup>nd</sup> by Phil Anderson

(1:38:50) M. Culver – speaking to rationale for Grays Canyon EFHCA

(1:39:22) M. Culver – recognizing that the reference to original Alternative 1b is not in the Project Team’s Report 1; however, in September 2015, the Council moved the alternative forward, and it was in the preliminary and cumulative analyses presented to the Council in April 2016

(1:43:00) Sheila Lynch, NOAA GC – Question regarding the intent of the motion because there is very active litigation on the western boundary of the Quileute and Quinault usual and accustomed areas. Right now, I understand that one possible result of that litigation could be that the boundaries are moved further west—is the intent of your motion for the boundary of these EFHCAs to move with any potential changes to the U&A boundary?

(1:43:39) M. Culver – I understand that there has been litigation and it is ongoing. The original motion was filed in 2009. We received the first court decision in September 2015 and then the adjudication of those western boundaries was further clarified in March 2018. So, it has been going on for quite some time and it is unpredictable when there may be changes or revisions to the court orders. I would assume that the Council would be compliant with any applicable court decisions moving forward and would expect there would be a continual dialogue with the Coastal Treaty Tribes and National Marine Fisheries Service should there be proposed changes to these areas in the future to be in compliance with those court order decisions.

(1:45:08) Phil Anderson – Another important point is that the state and the Quinault Indian Nation have coordinated on these areas that are adjacent to the Quinault Indian Nation’s U&A. I don’t think they conditioned their support on that. But, as Michele said, if the boundary has changed and the Quinault Indian Nation wished to make a modification, I’m sure the state and the Quinault Indian Nation would bring that forward to the Council for action, as appropriate.

(1:45:55) Joe Oatman – I had a similar question to what Sheila just provided and, with the responses from Michele and Phil, I think you’ve answered my question.