Regulatory Impact Review/
Regulatory Flexibility Analysis/MSA Analysis
for Proposed Amendment
to the Groundfish Fishery Management Plan for Deep Sea Coral Research and Restoration

September 2024

Lead Agency:	National Marine Fisheries Service, West Coast Region National Oceanic and Atmospheric Administration
Responsible Official:	Jennifer Quan, Administrator West Coast Regional Office, National Marine Fisheries Service (NMFS)

For further information contact: *Jessi Doerpinghaus, Pacific Fishery Management Council Staff*
Megan Mackey, NMFS Staff

Abstract: This Regulatory Impact Review and Magnuson-Stevens Fishery Conservation and Management Act Analysis analyzes an action to implement closures to commercial groundfish bottom contact gear in the Monterey Bay National Marine Sanctuary (MBNMS) for deep sea coral research and restoration. The action responds to a request by the Office of National Marine Sanctuaries. This action would create a groundfish exclusion area (GEA) at Sur Ridge for groundfish commercial bottom contact gears.

List of Acronyms and Abbreviations

Acronym or Abbreviation	Meaning
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
Council	Pacific Fishery Management Council
E.O.	Executive Order
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EFH	essential fish habitat
EIS	Environmental Impact Statement
FMP	fishery management plan
FONSI	Finding of No Significant Impact
FR	*Federal Register*
FRFA	Final Regulatory Flexibility Analysis
ft	foot or feet
IRFA	Initial Regulatory Flexibility Analysis
m	meter or meters
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
NAO	NOAA Administrative Order
NEPA	National Environmental Policy Act
NMFS	National Marine Fishery Service
NOAA	National Oceanic and Atmospheric Administration
OFL	Overfishing limit
OMB	Office of Management and Budget
PPA	Preliminary preferred alternative
PRA	Paperwork Reduction Act
RCA	Rockfish Conservation Area
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
SAFE	Stock Assessment and Fishery Evaluation
SBA	Small Business Act
Secretary	Secretary of Commerce
U.S.	United States
USCG	United States Coast Guard
VMS	vessel monitoring system
WCGOP	West Coast Groundfish Observer Program

Accessibility of this Document: Effort has been made to make this document accessible to individuals with disabilities and compliant with Section 508 of the Rehabilitation Act. The complexity of this document may make access difficult for some. If you encounter information that you cannot access or use, contact the NMFS West Coast Region so that we may assist you.

Table of Contents

1 Introduction 4
1.1 Problem Statement 4
1.2 History of this Action 4
1.3 Description of Management Area 5
2 Description of Alternatives 6
2.1 No Action 6
2.2 Alternative 1- Año Nuevo and Ascension Canyons 6
2.3 Alternative 2-Sur Ridge 8
2.4 Final Preferred Alternative 10
2.5 Comparison of Alternatives 10
3 Regulatory Impact Review 12
3.1 Statement of the Problem 12
3.2 Description of the management goals and objectives 12
3.3 Description of Fisheries and Other Affected Entities 12
3.4 Description of the Alternatives 13
3.5 An Economic Analysis of the Expected Effects of Each Selected Alternative Relative to the No Action Alternative 13
3.5.1 Analysis of Expected Effects: No Action 13
3.5.2 Analysis of Expected Effects: Alternative 1 13
3.5.3 Analysis of Expected Effects: Alternative 2 (FPA) 18
3.6 Summation of the Alternatives with Respect to Net Benefit to the Nation 19
3.7 Determination of Significant Impact 19
4 Regulatory Flexibility Analysis 20
4.1 Description of why action by the agency is being considered 21
4.2 Statement of the objectives of, and legal basis for, the proposed rule 21
4.3 A description and, where feasible, estimate of the number of small entities to which the proposed rule will apply; and a description and estimate of economic effects on entities, by entity size and industry. 21
4.4 An explanation of the criteria used to evaluate whether the rule would impose "significant" economic effects. 23
4.5 An explanation of the criteria used to evaluate whether the rule would impose effects on "a substantial number" of small entities. 23
4.6 A description of, and an explanation of the basis for, assumptions used. 23
4.7 Reporting and recordkeeping requirements 23
4.8 Relevant Federal rules that may duplicate, overlap or conflict with the proposed rule: 23
4.9 A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities 23
4.10 Certification statement by the head of the agency. 24
5 Magnuson-Stevens Act and FMP Considerations 25
5.1 Magnuson-Stevens Act National Standards 25
5.2 Section 303(a)(9) Fisheries Impact Statement 27
6 Other Applicable Laws 28
7 Preparers and Persons Consulted 29
8 References 30

List of Tables

Table 1. Coordinates for Año Nuevo Canyon coral restoration and research area (Alternative 1, Option a) 7
Table 2. Coordinates for Ascension Canyon coral research and restoration area (Alternative 1, Option b)..... 7
Table 3. Coordinates for Sur Ridge coral research and restoration site..... 9
Table 4. Summary of alternatives and major impacts. 10
Table 5. Average revenues ($2023) by port group and groundfish sector from PacFIN catch area 1b (40° 30' to 36° N. lat.) from 2019-2023. c/ denotes confidential strata. 18
Table 4-1. Range of Vessels by Fishery Sector (2019-2023)..... 22

List of Figures

Figure 1. Año Nuevo Canyon coral research and restoration area (Alternative 1, Option a)..... 6
Figure 2. Ascension Canyon coral research and restoration area (Alternative 1, Option b)..... 7
Figure 3. Sur Ridge coral restoration and research site (Alternative 2)..... 9
Figure 4. Map of potential deep sea coral research and restoration locations within the MBNMS. 11
Figure 5. Intensity of Fishing Effort (km/km^2/yr) and footprint (percent of coastwide efforts) for catch shares and non-catch shares fisheries from 2011-2018. Source: WCGOP 14
Figure 6. Intensity of Fishing Effort (km/km^2/yr) and footprint (percent of coastwide efforts) for catch shares and non-catch shares fisheries from 2019-2020. Source: WCGOP 15
Figure 7. Intensity of Fishing Effort (km/km^2/yr) and footprint (percent of coastwide efforts) for catch shares and non-catch shares fisheries from 2021. Source: WCGOP..... 16

1 Introduction

This document analyzes proposed management measures that would apply exclusively to the Pacific Coast groundfish fishery. The action would implement a groundfish exclusion area (GEA) at Sur Ridge for the purposes of coral research and restoration within the Monterey Bay National Marine Sanctuary (MBNMS). GEAs were developed as a part of Amendment 32 to the Groundfish Fishery Management Plan (FMP) (88 FR 83830) and are a management tool designed to "mitigate impacts to sensitive environments from certain groundfish fishing activity" (pg. 92 of the Groundfish FMP). GEAs were developed as a specific groundfish conservation area that could "be used to protect sensitive areas that are separate and distinct from groundfish essential fish habitat (EFH)" (88 FR 83830).

This document is a Regulatory Impact Review/Regulatory Flexibility Act Analysis/ Magnuson-Stevens Fishery Conservation and Management Act Analysis (RIR/RFAA/MSA). An RIR/RFAA/MSA provides an assessment of the benefits and costs of the alternatives and the distribution of impacts (the RIR), identification of the small entities that may be affected by the alternatives (RFAA), and analysis of how the alternatives align with the MSA National Standards. This RIR/RFAA/MSA addresses the statutory requirements of the Magnuson Stevens Fishery Conservation and Management Act (MSA), Presidential Executive Order 12866, and the Regulatory Flexibility Act (RFA). An RIR/RFAA/MSA is a standard document produced by the Pacific Fishery Management Council (Council) and the National Marine Fisheries Service (NMFS) West Coast Region to provide the analytical background for decision-making. Analysts have consulted with NMFS West Coast Region and have preliminarily determined that the proposed action falls within one of the NOAA Categorical Exclusion categories listed in Appendix F of the Companion Manual for NOAA Administrative Order 216-6A and that none of the alternatives have the potential to have a significant effect individually or cumulatively on the human environment. This determination is subject to further review and public comment. If this determination is confirmed when a proposed rule is prepared, the proposed action will be categorically excluded from the need to prepare an Environmental Assessment under the National Environmental Policy Act.

1.1 Problem Statement

The purpose of this action is to close areas within the national marine sanctuaries off California to commercial groundfish bottom contact gear, in order to protect deep-sea coral research and restoration projects from the impacts of fishing gear.

1.2 History of this Action

The purposes and policies of the National Marine Sanctuaries Act (NMSA) include supporting, promoting, and coordinating scientific research on, long-term monitoring of, and restoration and enhancement of the natural resources within the national marine sanctuaries (see 16 U.S.C. § 1431). This includes promoting and conducting research on deep sea coral survival, growth, reproduction, genetic connectivity, density, diversity, associations with other species, and recovery and restoration from damage in these marine areas. Preventing impacts from direct human activities such as from bottom-contact fishing gear may allow scientists and managers to observe, study, and restore deep sea coral communities in natural conditions over time. Information about deep sea coral life history could contribute to a coordinated and comprehensive approach to the conservation and management of deep-sea habitats within the national marine sanctuaries, including the MBNMS. Such research and restoration would be consistent with (and contribute to) the deep sea coral research mandates found in the MSA (see 16 U.S.C. § 1884 (a)). Additionally,

such research and restoration may further our understanding of fish associations with deep sea coral and thus could both help NMFS and ONMS describe and identify essential fish habitat (EFH) within the national marine sanctuaries, and assist NMFS and the Council in developing fisheries management measures to protect the fishery and other natural resources in these marine areas.

In February 2023, Greater Farallones National Marine Sanctuary (GFNMS) and MBNMS sent a joint letter to the Council, (Agenda Item F.4.a, Supplemental ONMS Report 1, March 2023) detailing a potential deep-sea coral restoration project focused on deep-sea coral outplanting[1] in two to five locations within the sanctuaries. These locations were (and still are) closed to bottom trawl fishing from both federal (i.e., groundfish) and state (e.g., pink shrimp) fisheries in bottom trawl EFH Conservation Areas (EFHCAs), and some portion of four of the five locations in the project proposal were closed at the time to non-trawl commercial groundfish in the Non-Trawl Rockfish Conservation Area (RCA).

In its letter, ONMS encouraged the Council to consider pathways to protect potential coral restoration sites from groundfish bottom-contact fishing gear in the future. At the March 2023 meeting, the Council was considering final action on Amendment 32 to the Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP), which made changes to the non-trawl RCA and opened up areas of interest to ONMS for coral restoration. While the timing did not allow for the Council and ONMS to include any area closures for coral restoration under the Amendment 32 action, the Council did commit to considering the matter at a future meeting.

In September 2023, ONMS presented a scoping paper that posed five locations (the same general locations posed in the March 2023 letter), with ten areas (or 'sites') within GFNMS and MBNMS (Agenda Item H.2.a, ONMS Report 1, September 2023), for deep sea coral restoration and research (i.e., expanding the previous scope to add research). The potential general sites (outplanting areas) from March 2023 did differ from some of the locations (five larger described areas) that were presented in the September 2023 scoping paper. Ultimately, the Council chose to only continue to scope closures at the locations of Año Nuevo and Ascension Canyons (two sites) and Sur Ridge (one site) in MBNMS for areas to promote coral research and restoration. These three sites have been opened to fishing by non-trawl gears and were never closed through the non-trawl RCA. The Council proposed that these areas could be closed to bottom contact gears.

At the March 2024 meeting, the Council adopted a range of alternatives that included modified versions of the Año Nuevo and Ascension Canyon sites to address concerns raised by the public regarding closing off key fishing grounds shallower than 400 fathoms (fm) (Agenda Item E.2.a, Supplemental NMFS Report 2, March 2024) and enforcement concerns (Agenda Item E.2.a, Supplemental EC Report 1, March 2024). The Council also confirmed that the sites would only be closed to commercial groundfish bottom contact gears and no other gear types or fisheries would be included in the closures.

At the June 2024 meeting, the Council adopted their final preferred alternative of developing a GEA for commercial groundfish bottom contact gear at Sur Ridge in MBNMS. If the GEA is established, it is expected that ONMS will begin deep-sea coral outplanting in 2025.

1.3 Description of Management Area

The proposed action area is within the United States Exclusive Economic Zone (EEZ) within the boundaries of the MBNMS. Some areas within the MBNMS are not considered part of the action area because direct and indirect impacts are not anticipated from any of the alternatives described in Chapter 2.

[1] Coral outplanting is a process that takes coral segments "source corals" from healthy colonies and transplants them to a new location.

2 Description of Alternatives

The following alternatives were adopted by the Council at its March 2024 meeting. The final preferred alternative (FPA) was adopted in June 2024.

2.1 No Action

Under No Action, there would be no new closures implemented for any federal groundfish fisheries for the purposes of coral research and restoration. Fisheries would be able to continue to operate as allowed under groundfish regulations found at 50 CFR 660.

2.2 Alternative 1- Año Nuevo and Ascension Canyons

Alternative 1 would create a GEA closure to commercial groundfish bottom contact gears, for the purpose of deep-sea coral research and restoration, and includes two options, a and b. Both options were considered as part of the range of alternatives.

Option a: Año Nuevo Canyon (Figure 1, Coordinates defined in Table 1)

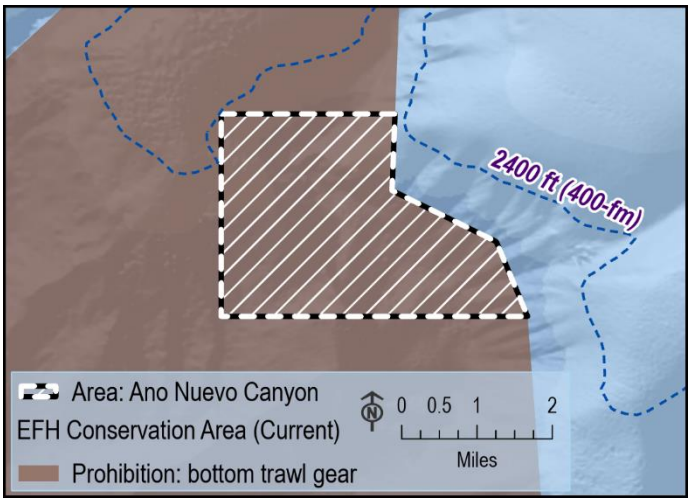

Figure 1. Año Nuevo Canyon coral research and restoration area (Alternative 1, Option a)

Table 1. Coordinates for Año Nuevo Canyon coral restoration and research area (Alternative 1, Option a)

Vertices	Coordinates (Decimal Degrees)
1	36.91755886° N. lat., -122.42741356° W. lon.
2	36.9175589° N. lat., -122.39404778° W. lon.
3	36.90284944° N. lat., -122.39463141° W. lon.
4	36.89305058° N. lat., -122.37460721° W. lon.
5	36.87869299° N. lat., -122.36859491° W. lon.
6	36.878693° N. lat., -122.42741356° W. lon.
7 (Same as 1)	36.91755886° N. lat., -122.42741356° W. lon.

Option b: Ascension Canyon (Figure 2, Coordinates defined in Table 2)

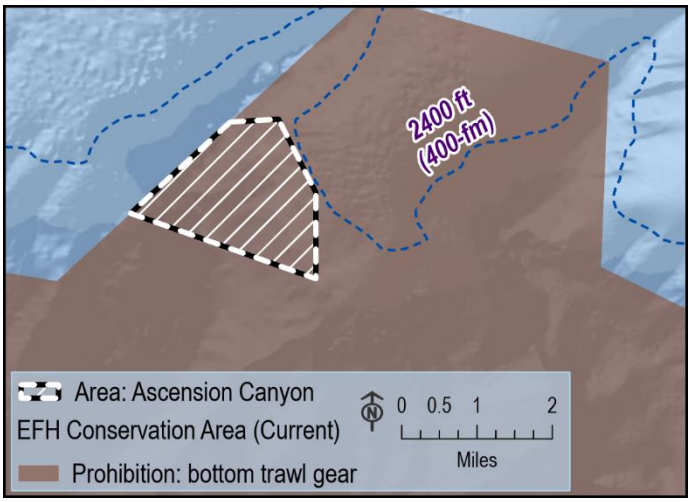

Figure 2. Ascension Canyon coral research and restoration area (Alternative 1, Option b)

Table 2. Coordinates for Ascension Canyon coral research and restoration area (Alternative 1, Option b).

Vertices	Coordinates (Decimal degrees)
1	36.93068188° N. lat., -122.46581824° W. lon.
2	36.9312256° N. lat., -122.45655193° W. lon.
3	36.91718039° N. lat., -122.44940173° W. lon.
4	36.90060991° N. lat., -122.44940174° W. lon.
5	36.9131568° N. lat., -122.48495246 ° W. lon.
6 (Same as 1)	36.93068188° N. lat., -122.46581824° W. lon.

Under Alternative 1, a closure for bottom contact gear would be developed within the Monterey Bay/Canyon bottom trawl EFHCA at Año Nuevo (Option a) and/or Ascension Canyon (Option b). These options are not mutually exclusive, and the Council considered recommending one or both of the options. Depths for the potential closures ranged from 2,493-4,659 ft at Año Nuevo Canyon or 2,395-4,790 ft for Ascension Canyon.

For federal groundfish fisheries, a GEA (groundfish exclusion area) would be implemented at one or both of the two areas. As a reminder, GEAs were developed to protect sensitive areas that are separate from EFH. The only legal commercial non-trawl gear type that would be permitted in this area would be non-bottom contact gears, as specified in the "Fishing Gear" definitions at 50 CFR 660.11(12). Midwater trawl gears would continue to be permitted in the area. Bottom trawl fisheries (state and federal) would continue to be prohibited from operating in this area because it is within the EFHCA. If the EFHCA were to be removed in the future, the GEA would continue to apply to groundfish bottom trawl fisheries as bottom trawl gear is considered bottom contact gear. Recreational groundfish fisheries would not be subject to the GEA.

This alternative would require a regulatory amendment and an amendment to the Groundfish FMP.

2.3 Alternative 2-Sur Ridge

Alternative 2 would create a GEA closure to commercial groundfish bottom contact gears, for the purpose of deep-sea coral research and restoration.

Under Alternative 2, a GEA for bottom contact gear would be developed at Sur Ridge (Figure 3). Coordinates for the closure can be found in Table 3.

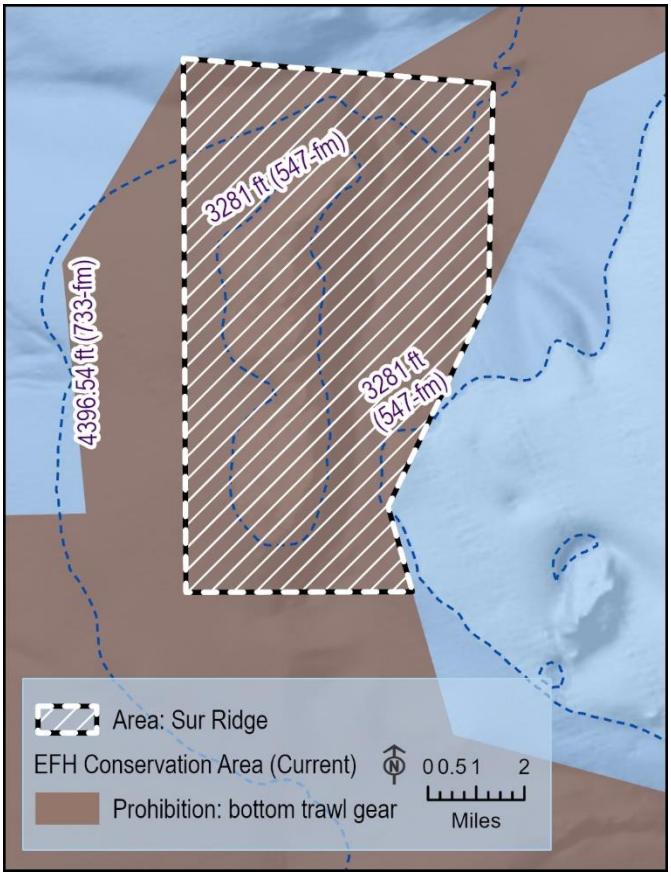

Figure 3. Sur Ridge coral restoration and research site (Alternative 2).

Table 3. Coordinates for Sur Ridge coral research and restoration site.

Vertices	Coordinates (Decimal degrees)
1	36.43333817° N. lat., -122.34684636° W. lon.
2	36.42576220° N. lat., -122.25391390° W. lon.
3	36.36187572° N. lat., -122.25532814° W. lon.
4	36.29922023° N. lat., -122.28545913° W. lon.
5	36.27374036° N. lat., -122.27816015° W. lon.
6	36.27352593° N. lat., -122.34606915° W. lon.
7 (Same as 1)	36.43333817° N. lat., -122.34684636° W. lon.

As with Alternative 1, for federal commercial groundfish fisheries, a GEA would be implemented at the site. The only legal gear type that would be permitted in this area would be non-bottom contact gears, as specified in the "Fishing Gear" definitions at 50 CFR 660.11(12). Midwater trawl gears would continue to be permitted in the area. Bottom trawl fisheries (state and federal) would continue to be prohibited from operating in this area because it is within the EFHCA. If the EFHCA were to be removed in the future, the GEA would continue to apply to bottom trawl fisheries. Recreational groundfish fisheries would not be subject to the GEA closure.

This alternative would require a regulatory amendment and an amendment to the groundfish FMP.

Alternatives 1 and 2 were not considered mutually exclusive and the Council considered recommending one or both of the alternatives, including either option a. or b. under Alternative 1, as the FPA.

2.4 Final Preferred Alternative

In June 2024, the Council recommended Alternative 2 (Sur Ridge) as its FPA. This would create a GEA for groundfish bottom contact gear at the proposed Sur Ridge site. Additionally, the Council recommended that monitoring of the progress of any future deep-sea coral research and restoration that is conducted at the Sur Ridge site occur at three, six, and nine year intervals following implementation.

2.5 Comparison of Alternatives

Table 4. Summary of alternatives and major impacts.

	No Action	**Alternative 1**	**Alternative 2 (FPA)**
Location		**Año Nuevo/Ascension Canyon**	**Sur Ridge**
Differences in Alternatives (Sections 2.1 and 2.2)			
Area size	No closures	1.83-4.92 sq. nm	36.64 sq. nm
Depth range	No closures	Año Nuevo Canyon: 2,493-4,659 ft (416-776 fm) Ascension Canyon: 2,395-4,790 (399-798 fm)	2,690-5,118 ft (448-853 fm)
Environmental Impacts			
Fish	No changes	Negligible impacts	Negligible impacts
Protected Species	No changes	Negligible impacts	Negligible impacts
Habitat	No change	Positive impacts	Positive impacts
Ecosystem	No change	Positive impacts	Positive impacts
Economic Impacts			
Fishing effort	No change	Uncertain, but potential shift in effort	Uncertain, but potential shift in effort
Gross Revenue at Risk	No change	Uncertain, but negligible to potential negative	Uncertain, but negligible to potential negative

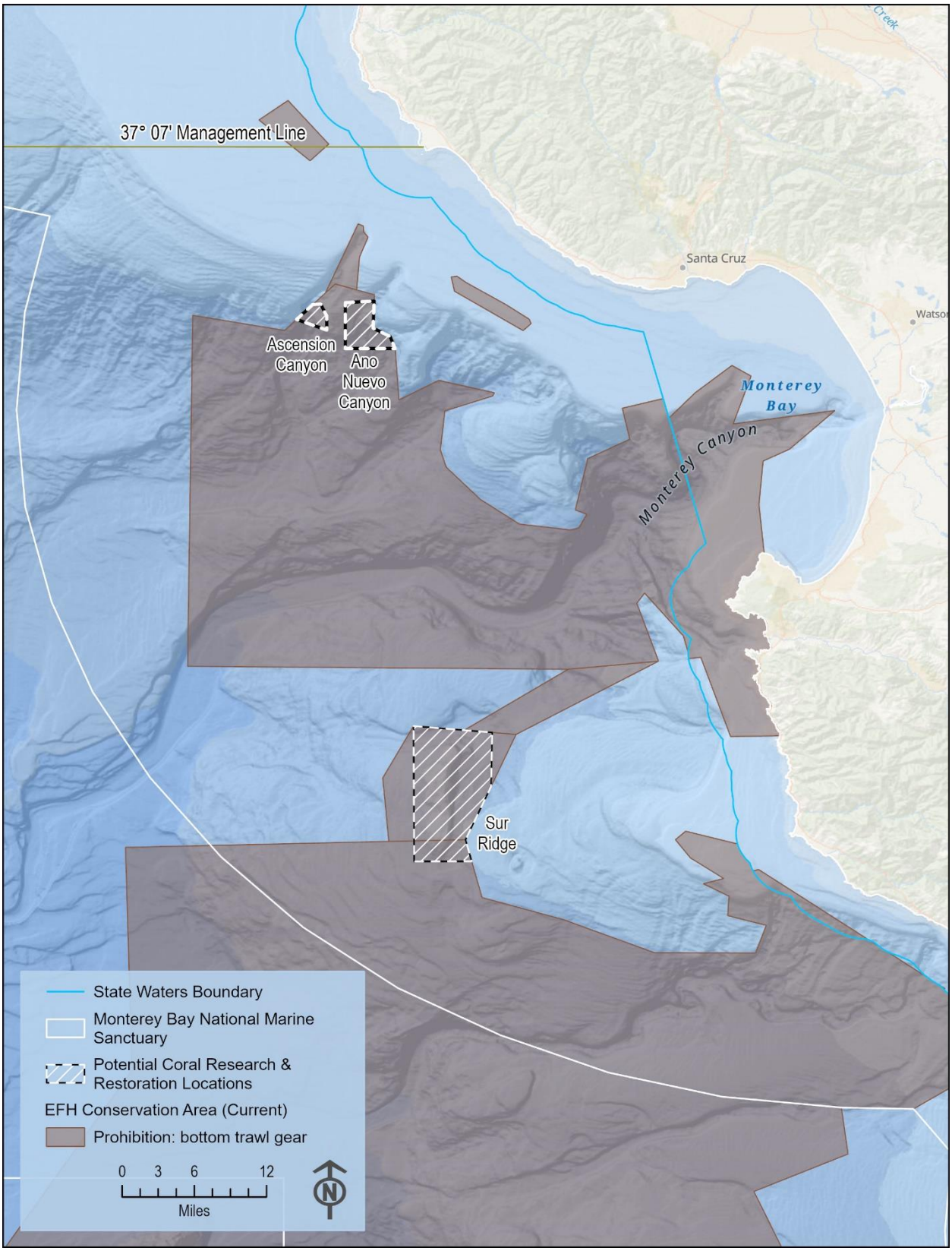

Figure 4. Map of potential deep sea coral research and restoration locations within the MBNMS.

3 Regulatory Impact Review

The President of the United States signed E.O. 12866, "Regulatory Planning and Review," on September 30, 1993. This order established guidelines for promulgating new regulations and reviewing existing regulations. The E.O. covers a variety of regulatory policy considerations and establishes procedural requirements for analysis of the benefits and costs of regulatory actions. The E.O. stresses that in deciding whether and how to regulate, agencies should assess all of the costs and benefits of available regulatory alternatives. Based on this analysis, they should choose those approaches that maximize net benefits to the Nation, unless a statute requires another regulatory approach.

NMFS satisfies the requirements of E.O. 12866 through the preparation of an RIR. The RIR provides a review of the potential economic effects of a proposed regulatory action in order to gauge the net benefits to the Nation associated with the proposed action. The analysis also provides a review of the problem and policy objectives prompting the regulatory proposal and an evaluation of the available alternatives that could be used to solve the problem.

The RIR provides an assessment that can be used by the Office of Management and Budget to determine whether the proposed action could be considered a significant regulatory action under E.O. 12866. E.O. 12866 defines what qualifies as a "significant regulatory action" and requires agencies to provide analyses of the costs and benefits of such action and of potentially effective and reasonably feasible alternatives. An action may be considered significant if it is expected to:

- Have an annual effect on the economy of $200 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

3.1 Statement of the Problem

A statement of the problem is available above in Section 1.1 titled "Problem Statement".

3.2 Description of the management goals and objectives

A description of the management goals and objectives can be found in Section 1.1.

3.3 Description of Fisheries and Other Affected Entities

The groundfish sectors subject to this action include shorebased individual fishing quota (IFQ), limited entry fixed gear (LEFG), and directed open access (OA) vessels using bottom contact gear types. A detailed description of the fishery and affected entities is available in Section 1.4.1.2 of the Stock Assessment and Fishery Evaluation (SAFE) document. This includes a summary of historic harvests, description of management, and economic characteristics of harvesting vessels, processors, and communities.

3.4 Description of the Alternatives

A description of the Alternatives is available in Section 2.

3.5 An Economic Analysis of the Expected Effects of Each Selected Alternative Relative to the No Action Alternative

3.5.1 Analysis of Expected Effects: No Action

Under No Action, there would be no new area closures for deep sea coral research and restoration in the MBNMS. Groundfish fisheries would be able to operate as under current regulations. There would be no costs associated with No Action to the fishing industry or NMFS.

3.5.2 Analysis of Expected Effects: Alternative 1

Under Alternative 1, a GEA for coral restoration and research would be implemented at Año Nuevo and/or Ascension Canyon and be applicable to groundfish bottom contact gears. Depending on the option selected, this would result in 4.92 (Option a), 1.83 sq. nm. (option b), or a total of 6.75 sq. nm. of area being closed to applicable groundfish operations.

For groundfish fisheries, there has historically been non-trawl activity within the areas of Año Nuevo and Ascension Canyons in both the non-catch shares and catch shares (i.e., trawl permitted vessels using non-trawl gear or "gear switching") fisheries. Figure 5 through Figure 7 below show the intensity of fishing (color scale) and footprint (grey scale) from 2011-2018, 2019-2020, and 2021, respectively, in the catch shares pot (left panel), non-catch shares pot (middle panel) and hook and line (right panel) fisheries observed by the West Coast Groundfish Observer Program (WCGOP). There were no observations from the catch shares hook and line fishery (2011-2021) in the general area of the closure and therefore these are excluded from the figures. Additionally, there were no observations from the non-catch shares hook and line fishery in the figure extent in 2021 (Figure 7) and therefore there is not a panel representing this stratum in the figure. The data compared to the potential closures can be seen at the Deep Sea Coral Research and Restoration Scoping Tool. The fishing intensity scale shows the effort by each gear/sector strata in the given year(s) at a finer spatial scale (noting that areas with fewer than three vessels were removed for confidentiality). The footprint scale is at a larger scale (10 x 10 min blocks) and shows the percentage of coastwide effort in that block in that strata; these blocks are not considered confidential even if fewer than three vessels were active in a given time period. As an example of how to read this on the map, in Figure 5 for 2011-2018, the darker shading of grey behind Año Nuevo for catch shares pot (left panel) means that there was a higher percentage of effort coastwide in that block compared to the block to the right of Año Nuevo (lighter grey), but due to confidentiality, the precise intensity scale of the fishing at the finer spatial scale could not be shown. For a full description of the methodology, see https://www.pcouncil.org/documents/2023/05/h-6-a-nmfs-report-6-fishing-effort-in-the-2002-2021-u-s-pacific-coast-groundfish-fisheries-electronic-only.pdf/ Somers, et.al 2023.

Fishing activity was observed in the areas of potential closure under both Alternative 1 options over the time series and, therefore, there is likely to be some impacts to fishing vessels that operate in these areas historically. However, it is not clear how much total fishing activity is taking place in those areas due to confidentiality mandates and the fact that there is less than 100 percent observer coverage in the non-catch shares fisheries (discussed in detail below). In relation to the overall footprint of groundfish bottom contact fishing on the California coast, it is likely that negative impacts would be negligible. That said, given the proposed changes to the groundfish fisheries off of areas of California (areas north of 37°07' N lat.) due to restrictions associated with California quillback rockfish and other limited fishing opportunities (such as salmon or crab), it is likely that there could be increased effort in the general area of these proposed closures,

with vessels being forced offshore, or in the groundfish OA sector in general with vessels able to target high quotas of sablefish. However, it is worth noting that the proposed GEAs are south of the area of California being restricted due to quillback mortality so the impacts to potentially affected individuals may be less than if the proposed closures were north of 37° 07' N. lat.

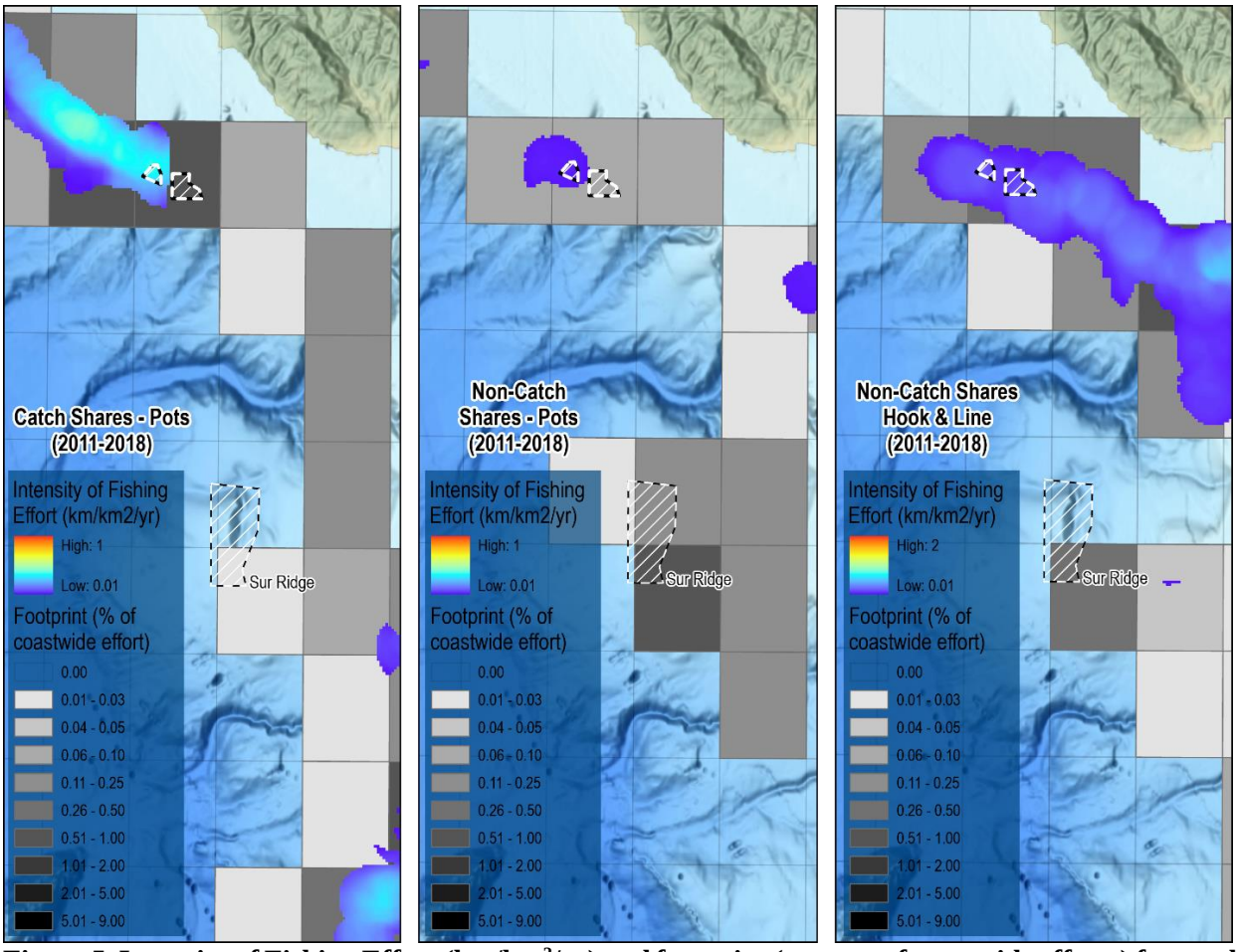

Figure 5. Intensity of Fishing Effort (km/km^2/yr) and footprint (percent of coastwide efforts) for catch shares and non-catch shares fisheries from 2011-2018. Source: WCGOP

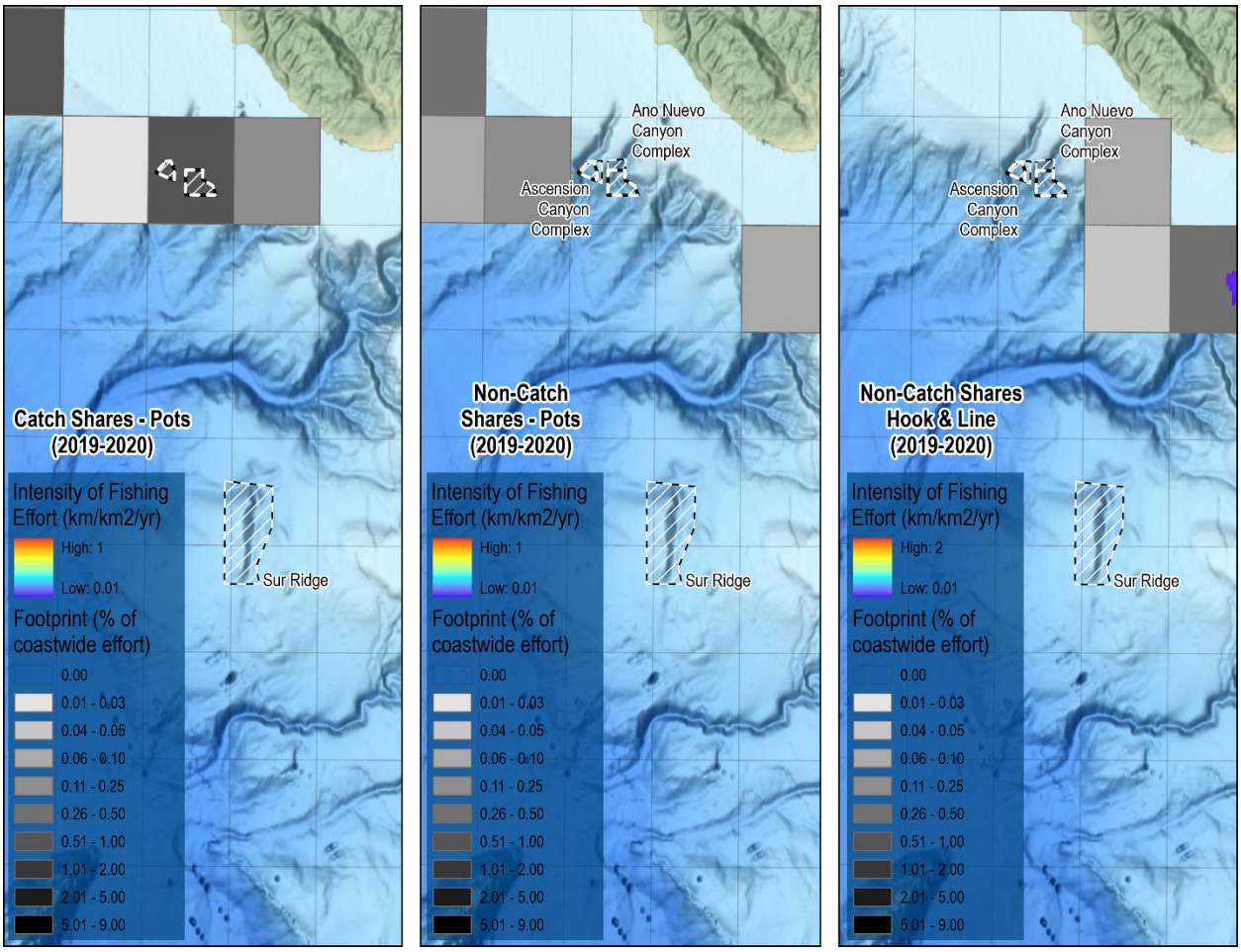

Figure 6. Intensity of Fishing Effort (km/km^2/yr) and footprint (percent of coastwide efforts) for catch shares and non-catch shares fisheries from 2019-2020. Source: WCGOP

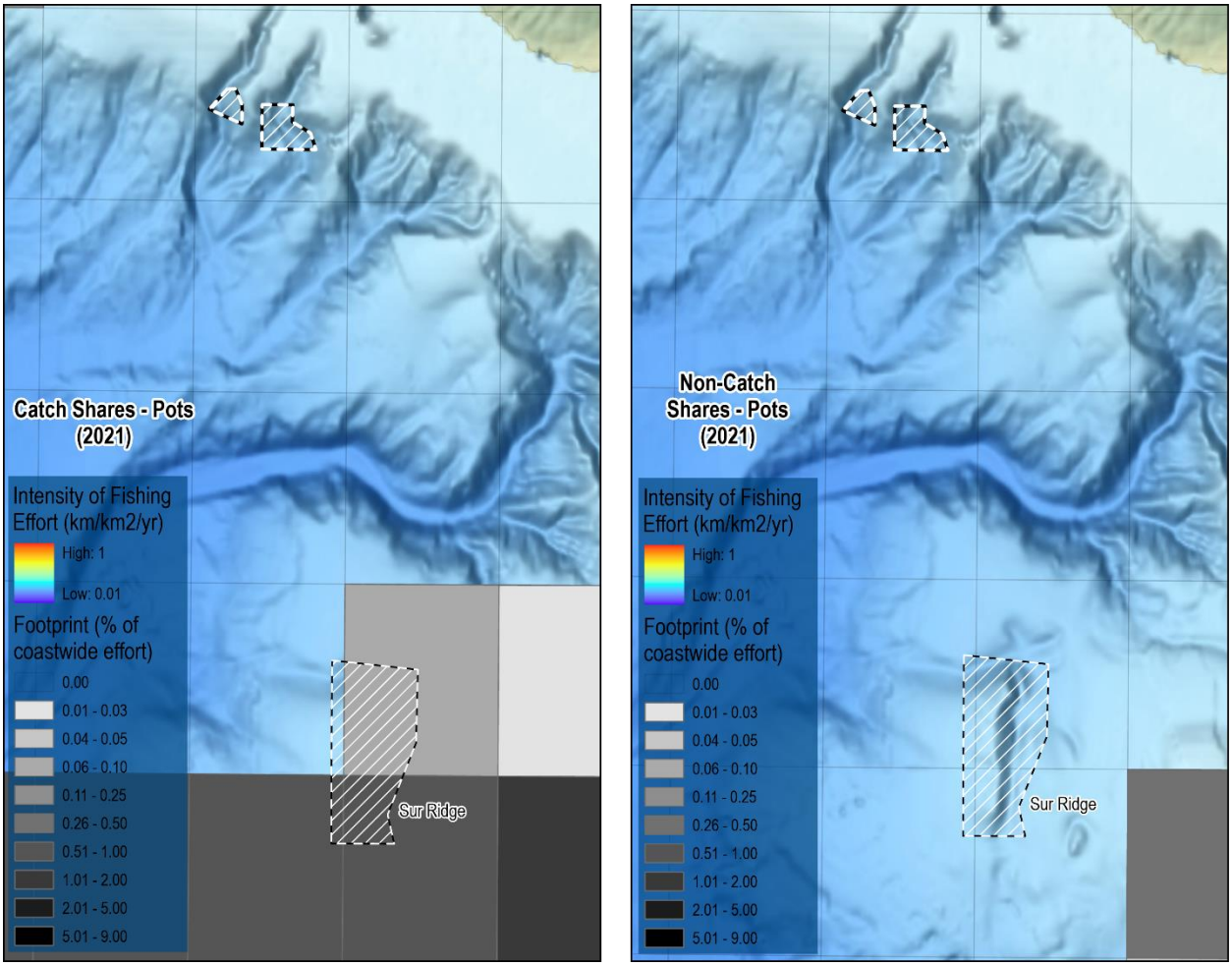

Figure 7. Intensity of Fishing Effort (km/km^2/yr) and footprint (percent of coastwide efforts) for catch shares and non-catch shares fisheries from 2021. Source: WCGOP

Note that while the intensity and footprint maps may show low levels of fishing effort or a lack of recent historical footprint, these data represent only observed sets and, in the non-catch shares sectors, reflect a relatively low level of observer coverage of the sector. As an example of the limitations of the observer coverage, within the latitudinal bin of 40° 10' to 36° N. lat., only 5 percent of groundfish landed were observed (representing 2.5 percent of coastwide OA landings) on average from 2018-2022. Yet, on average, 45 percent of all OA groundfish landings are landed in this area (Somers, et. al 2023). While this band of latitudes is much larger than the actual potential action areas, it is the catch area that encompasses the proposed closures (both Alternatives). For the sablefish primary fishery, there were fewer than three vessels in the area annually observed from 2018-2022, with the exception of 2019 when 1.4 percent of the total coastwide sablefish landings were observed (or 9 percent of the landings within the area). In the same five-year time period, approximately 16 percent of the total sablefish landings in the sector were landed in this area. For the limited entry non-sablefish endorsed fishery (i.e., daily trip limit, DTL), it is estimated that an average of 3.4 percent of coastwide landings are observed.[2] No further stratification could occur due to confidentiality. The majority of non-catch shares observations are from the LEFG primary fleet, which primarily delivers into Puget Sound, Newport and Coos Bay/Brookings, outside of the action area

[2] This value was calculated by dividing the observed landings in the observer coverage report (Somers et al 2023) by the total groundfish landed in the DTL fishery in the GEMM report.

(Table 13 of 2022 LEFG Program Review). All catch shares trips are monitored (via electronic monitoring (EM) or observer) and less than 13 percent of total landings are caught in this area on average.

In March 2024, the Council requested that vessel monitoring system (VMS) data be examined to determine how much fishing is potentially occurring in the vicinity of the proposed coral research and restoration areas given the limited observer data. Using VMS data from 2019-2023, with declaration codes associated with non-trawl bottom contact gears[3] and speeds of less than five knots (used to simulate when vessels are fishing rather than transiting), analysts examined fishing track density as a proxy to assess the overall fishing effort in the proposed closed areas. Overall, in the last five years, there has been activity in the proposed Alternative 1 areas of Año Nuevo and Ascension Canyons which corresponds with what is shown in the WCGOP observer data and what was noted by industry in March 2023 (discussed more below). A closer look at a longer time series of data (2010-2022) for the four declaration codes was also examined. Overall, there has historically been a high degree of fishing effort (based on fishing tracks being a proxy for effort) in the OA hook-and-line sector compared to the other declaration codes. All sectors had some degree of effort historically in the proposed Alternative 1 areas.

While WCGOP and VMS depict some level of fishing in the areas of Alternative 1, these areas were identified as key sablefish grounds by the Groundfish Advisory Subpanel (GAP) and public comment in March 2024. To minimize the impact to fishery participants, based on conversations with the GAP, the MBNMS revised the proposed coral restoration and research areas in March 2024 to be at depths greater than 400 fm (Agenda Item E.2.a, Supplemental NMFS Report 2). Sablefish fishing can occur at deeper depths, but it was suggested that by restricting the closures to deeper depths, vessels could maintain access to the canyons in the original proposed closed areas (commonly known as the "Fingers" or "Año Nuevo Fingers"). Given other current restrictions present off the California coast, including the recent and ongoing poor salmon seasons and the nearshore restrictions north of 37°07' N lat. established due to California quillback rockfish being declared overfished, offshore areas are expected to be of increased importance to the portfolios of commercial fisheries. In June 2024, further concerns were raised by industry on the impact of closing the Alternative 1 areas to sablefish fishing (June 2024 public comments). While data confidentiality restricted the use of data showing vessel activity in the area, public comments from the Morro Bay and Moss Landing areas noted that vessels frequently visited the two Alternative 1 areas and that even with the smaller proposed closure, it could "make it tedious to fish around those areas when accounting for drift while the gear is soaking and during the process of hauling the gear."

While the actual impacts to the fishing industry are uncertain, looking at the fishing revenues of various sectors that fish within the area might provide insight into the sectors, ports, and communities that could be impacted. Table 5 below shows the ex-vessel revenues by groundfish sector and port group from landings between 40° 30' and 36° N. lat from 2019-2023. While WCGOP estimates discussed above are for the area spanning 40°10' N. lat. to 36° N. lat., the closest approximation available in the Pacific Fisheries Information Network (PacFIN) is 40° 30' to 36° N. lat. Monterey Bay (including Morro Bay due to confidentiality) is the closest port group(s) to the sites in Alternative 1 and therefore could be the most likely to be impacted (assuming vessels in the area are fishing closer to the ports in which they are landing). Within the ports near the proposed GEA closures, Monterey Bay/Morro Bay are the most involved (measured as the ex-vessel value in a port as a share of total revenue) in the LEFG daily trip limit (DTL)

[3] Declarations codes used were 210 (Limited entry fixed gear, not including shorebased IFQ), 211 (Limited entry groundfish non-trawl, shorebased IFQ, observer/electronic monitoring), 233 (Open access bottom contact hook-and-line gear for groundfish), and 234 (Open access groundfish trap or pot gear). Note that trips could include multiple declarations. Any trip with one of the four declaration codes listed here were included in the analysis.

fisheries (sablefish and non-sablefish[4]). If vessels are actively fishing in the area of the Alternative 1 options, it is possible that vessels could fish in other areas and still maintain their operational levels. The degree of this impact can't be quantified, but depending upon the fishing opportunity typically available in the locations proposed for closure, as compared to different locations, it could range from negligible to something greater. Yet, given the size of the closures relative to the broader fishing footprint along the California coast, the impact is likely negligible to the fleet overall. No impacts to vessel safety are expected with Alternative 1, as GEAs allow for continuous transit.

Table 5. Average revenues ($2023) by port group and groundfish sector from PacFIN catch area 1b (40° 30' to 36° N. lat.) from 2019-2023. c/ denotes confidential strata.

Sector	Port Group				
	Bodega Bay	Ft. Bragg	Eureka	Monterey Bay a/	San Francisco
Catch Shares	$ 0	$ 0	$ 0	$ 77,084	
LEFG DTL	$ 49,330	$ 16,064	$ 0	$ 716,955	$ 18,375
Limited Entry Sablefish	$ c	$ 500,902	$ 12,314	$ 264,376	$ 88,603
OA Fixed Gear	$ 158,321	$ 316,694	$ 90,357	$ 476,050	$ 443,529

a/ includes Morro Bay port group landings

3.5.3 Analysis of Expected Effects: Alternative 2 (FPA)

Under the FPA, a total area of 36.64 sq. nm would be closed to commercial bottom contact groundfish fishing gears. While observer data do not show concentrated fishing intensity in the Sur Ridge area (see Figure 5 through Figure 7), a small amount of groundfish fishing effort was observed occurring in the area (shown by grey shading behind the proposed Sur Ridge closure). However, as described under Alternative 1, there is no way to assess whether the spatial patterns of observed effort are fully representative of the fleet's effort at fine spatial scales. VMS data showed no recent (2018-2023) effort (again, proxy using fishing track length) in the proposed location for Alternative 2 at Sur Ridge. However, historically (2010-2022), there was some effort in the area for the select groundfish non-trawl bottom contact declaration codes, but it was limited across the time series.

Compared to either or both options under Alternative 1, Alternative 2 would close off a larger portion of the currently accessible fishing area to the fleet. The degree of impact is, again, not quantifiable, but if fishing activity in the area would be displaced as a result of this action, the net impact would depend on the availability of fishing opportunities with similar proximity to shore, fishing success, and operational costs. The greater depth of Sur Ridge (300 feet deeper than Ascension/Año Nuevo Canyons) could imply a lower baseline level of fishing effort and therefore less impact to fishing activities than the Alternative 1 options. In March 2024, there was less public comment around Sur Ridge, compared to the sites under Alternative 1, likely due to the depths of the proposed closure. This was similar during public comment on the Council's final action in June 2024, during which industry noted that of the two sites Sur Ridge would be the least impactful to the fleet. However, sablefish vessels do operate at the depths of the Sur Ridge location, or deeper (pers. comm. Gerry Richter, June 2024 public comment), and therefore could be potentially displaced. Overall, impacts are uncertain, but likely to be negligible given the size of the closure relative to the broader fishing footprint off the coast of California. Similar to Alternative 1, the port groups most likely to be impacted are Monterey and Morro Bay, given the proximity to the proposed closure.

[4] Table 11-16 of Agenda Item F.4., Attachment 2, April 2022 depicts the involvement of all IOPAC port groups coastwide for non-sablefish fisheries in LEFG with Monterey ranking #3.

No impacts to vessel safety are expected with Alternative 2, as GEAs allow for continuous transit.

3.6 Summation of the Alternatives with Respect to Net Benefit to the Nation

The action alternatives described below are not mutually exclusive.

- The No Action Alternative would allow for fishing operations to continue as allowed under current regulations. There would be no new closures for deep sea coral research and restoration, which may result in the loss of scientific information on corals in these areas and a lost opportunity for deep sea coral restoration.
- Under Alternative 1, one or two new GEAs for coral research and restoration would be implemented near Año Nuevo and/or Ascension Canyons. These closures would be beneficial to scientific studies of deep-sea coral research and restoration implementation. The new fishery closures to groundfish participants could impact select sectors in the area, therefore causing a reduction in ex-vessel revenue and impacts to coastal communities. The degree to which is uncertain, but likely limited.
- Under the FPA, a new GEA for coral research and restoration would be implemented near Sur Ridge. This closure would be beneficial to scientific studies of deep-sea coral research and restoration. The new fishery closures to groundfish participants could impact select sectors in the area to a degree, therefore causing a reduction in ex-vessel revenue and impacts to coastal communities. The degree to which is uncertain, but likely more limited than Alternative 1.

3.7 Determination of Significant Impact

As noted above, under E.O. 12866, a regulation is a "significant regulatory action" if it is likely to: (1) have an annual effect on the economy of $200 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive Order, as specifically authorized in a timely manner by the Administrator of Office of Information and Regulatory Affairs (OIRA) in each case. At the time of this Analysis, OIRA has confirmed this action is not significant.

4 Regulatory Flexibility Analysis

For any rule subject to notice and comment rulemaking, the Regulatory Flexibility Act (RFA) requires Federal agencies to prepare, and make available for public comment, both an initial and final regulatory flexibility analysis, unless the agency can certify that the proposed and/or final rule would not have a "significant economic impact on a substantial number of small entities." These analyses describe the impact on small businesses, non-profit enterprises, local governments, and other small entities as defined by the RFA (5 U.S.C. § 603). This analysis is to inform the agency and the public of the expected economic effects of the alternatives, and aid the agency in considering any significant regulatory alternatives that would accomplish the applicable objectives and minimize the economic impact on affected small entities. The RFA does not require the alternative with the least cost or with the least adverse effect on small entities be chosen as the preferred alternative.

The Initial Regulatory Flexibility Analysis (IRFA) must only address the effects of a proposed rule on entities subject to the regulation (i.e., entities to which the rule will directly apply) rather than all entities affected by the regulation, which would include entities to which the rule will indirectly apply.

Part 121 of Title 13, Code of Federal Regulations (CFR), sets forth, by North American Industry Classification System (NAICS) categories, the maximum number of employees or average annual gross receipts a business may have to be considered a small entity for RFAA purposes. See 13 C.F.R. § 121.201. Under this provision, the U.S. Small Business Administration (SBA) established criteria for businesses in the fishery sector to qualify as small entities. Standards are expressed either in number of employees, or annual receipts in millions of dollars. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small (13 C.F.R. § 121.201).

- A fish and seafood merchant wholesaler (NAICS 424460) primarily engaged in servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide.
- A business primarily engaged in Seafood Product Preparation and Packaging (NAICS 311710) is a small business if it employs 750 or fewer persons on a full time, part time, temporary, or other basis (13 CFR § 121.106), at all its affiliated operations.

In addition to small businesses, the RFA recognizes and defines two other kinds of small entities: small governmental jurisdictions and small organizations. A small governmental jurisdiction is any government or district with a population of less than 50,000 persons. A small organization is any not-for-profit enterprise that is independently owned and operated and not dominant in its field. (5 U.S.C. § 601). There is no available guidance beyond this statutory language regarding how to determine if non-profit organizations are "small" for RFA purposes. The SBA does have provisions for determining whether a business is "small" for RFA purposes and whether it is "dominant in its field," and those provisions can inform how NMFS classifies non-profit organizations for the purposes of RFA analyses in rulemaking. After consultation with the SBA, NOAA Fisheries has decided to use SBA's size standards for non-profit organizations to determine whether a non-profit organization is "small" and, in turn, whether it is "dominant in its field," to apply the statutory definition of a "small organization" in practice:

- A nonprofit organization is determined to be "not dominant in its field" if it is considered "small" under SBA size standards:
- Environmental, conservation, or professional organizations (NAICS 813312, 813920): Combined annual receipts of $19.5 million or less.
- Other organizations (NAICS 813319, 813410, 813910, 813930, 813940, 813990): Combined annual receipts of $13.5 million or less.

The SBA size standard for Subsector 487, "Scenic and Sightseeing Transportation, Water", which includes charter fishing, is $14 million in gross receipts (13 CFR § 121.201).

Provision is made under the SBA's regulations for an agency to develop its own industry-specific size standards after consultation with advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (80 FR 81194, December 29, 2015). This standard is only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA.

NMFS' small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing is $11 million in annual gross receipts. This standard applies to all businesses classified under NAICS code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses. (50 C.F.R. § 200.2; 13 C.F.R. § 121.201).

4.1 Description of why action by the agency is being considered

The reasons why agency action is being considered are explained in Section 1.1, the "Problem Statement".

4.2 Statement of the objectives of, and legal basis for, the proposed rule

The statement of the objectives of the proposed rule are explained in the "Problem Statement" Section 1.1 above.

Under the MSA (16 U.S.C. 1801, *et seq*.), the United States has exclusive fishery management authority over all marine fishery resources found within the EEZ. The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in the regional fishery management councils. In the West Coast Region, the Council has the responsibility for preparing FMPs and FMP amendments for the marine fisheries that require conservation and management, and for submitting its recommendations to the Secretary. Upon approval by the Secretary, NMFS is charged with carrying out the Federal mandates of the Department of Commerce with regard to marine and anadromous fish.

The LEFG, directed OA, and shorebased IFQ fisheries in the EEZ off the West Coast are managed under the Groundfish FMP. The proposed action under consideration would amend Federal regulations at 50 CFR 660. Actions taken to implement regulations governing these fisheries must meet the requirements of applicable Federal laws, regulations, and Executive Orders.

4.3 A description and, where feasible, estimate of the number of small entities to which the proposed rule will apply; and a description and estimate of economic effects on entities, by entity size and industry.

All commercial groundfish participants that use bottom contact gear for fisheries in the EEZ off Washington, Oregon, and California managed under the Groundfish FMP may be affected by this action. Bottom contact are defined in federal regulation at 50 CFR 660.11:

> "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."

This list is non-exhaustive. All of the proposed coral research and restoration areas are within bottom trawl EFHCAs, which prohibit all bottom trawl gears from operating within the EFHCA boundaries. Therefore, the action proposed would apply to fishing with non-trawl bottom contact gear types within the proposed area closures. The commercial gears that would be permitted to operate within the closed areas, as currently proposed, are midwater trawl and select non-trawl gear types (commercial vertical hook-and-line gear not anchored to the bottom (e.g., vertical jig gear or rod-and-reel gear with weights suspended off the bottom) and troll gear).

A detailed description of the fishery and affected entities is available in the Stock Assessment and Fishery Evaluation document. This includes a description of the fishery (Chapter 1); description of management, and economic characteristics of harvesting vessels, processors, and communities (Chapter 2); and summary of historic landings and revenue (Chapter 3).

Given that these areas are currently closed to bottom trawl vessels, there would be no new impact to those vessels in implementing any of the alternatives. Therefore, this analysis focuses on non-trawl vessels that would be subject to new area closures.

From 2019-2023, there were 429 distinct vessels that utilized non-trawl bottom contact gears[5] in the three commercial groundfish sectors (directed OA, LEFG, and IFQ gear switching) with an annual average of 175 (Table 4-1), between the latitudes of 40° 30' to 36° N. lat. As described in Section 3.5.2, this is the catch area that encompassed the three proposed coral restoration and research areas included in Alternatives 1 and 2. The Council ultimately only recommended one area, Sur Ridge. Therefore, these values are expected to be the maximum of the vessels that would be potentially affected by this action. The actual number is likely less. The majority of affected vessels participate in the directed OA fishery. Due to confidentiality, IFQ gear switching vessels were combined with LEFG vessels.

Table 4-1. Range of Vessels by Fishery Sector (2019-2023)

Fishery Sector	Range	Average
OA	130-172	149
LEFG/IFQ	24-29	26

All directed OA vessels are assumed to be small entities, with ex-vessel revenues for all landings (groundfish and non-groundfish) averaging $71,959. In 2023, 26 of the 29 LEFG permits associated with vessels that would likely be subject to this action (required to fish in the primary or LE trip limit fisheries) were owned by small entities (self-reported). For gear switching vessels likely affected by this action, all reported as small entities in 2023.

Note that there is not a strict one-to-one correlation between vessels or permits and entities, therefore, some persons or firms likely have ownership interests in more than one vessel or permit. Given these factors, the actual number of entities regulated by this action could be lower than the preceding estimates.

[5] Vessels were selected based on FOS_Groundfish_Sector_Codes of "Catch Shares", "LE Fixed Gear DTL", "Limited entry Sablefish", and "OA Fixed Gear" and were not declared (using declaration code) associated with non-bottom contact gears.

4.4 An explanation of the criteria used to evaluate whether the rule would impose "significant" economic effects.

The criteria used to evaluate this rule are disproportionality and profitability.

The impact of the proposed action may disproportionately affect small entities compared to large entities and may result in some profit loss, if the proposed area to be closed is key to the affected parties and there are limited other fishing opportunities available. Given other likely fishing restrictions (nearshore restrictions north of the area, limited to no salmon seasons), offshore opportunities are likely to be of greater importance in the portfolios of California fishing vessels. However, given the limited historical fishing activity at Sur Ridge and the depth of the proposed closure, it is likely that a limited subset of vessels might be impacted. Vessels could potentially move to other areas and maintain harvest opportunities. This ability to shift fishing effort and the actual impact of the proposed closures to profitability is uncertain.

4.5 An explanation of the criteria used to evaluate whether the rule would impose effects on "a substantial number" of small entities.

While this action would apply to the entirety of all entities fishing with fixed gear, and the majority of those entities are considered small entities, this rule is expected to have an impact on a minimal number of small entities given that there has historically been limited activity in the Sur Ridge area.

4.6 A description of, and an explanation of the basis for, assumptions used.

Section 4.3 describes the data sources and methods used to determine the population of potential affected entities and those that would classify as small entities. Overall, fishing participation levels can change over time, leading to uncertainty in the number of affected entities. However, it is likely that the estimates provided are representative of the potential affected parties.

4.7 Reporting and recordkeeping requirements

There are no reporting or recordkeeping requirements associated with this action.

4.8 Relevant Federal rules that may duplicate, overlap or conflict with the proposed rule:

There are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

4.9 A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities

The other alternatives proposed in this action would have accomplished the objectives of creating closures for deep-sea coral research and restoration, yet the impacts of those alternatives were considered more significant to industry by the Council. In the recommendation of the FPA, the Council recognized public comments from fishing participants from the Morro Bay and Monterey Bay communities that recommended against the selection of Alternative 1 sites. These sites were seen as key sablefish grounds, even at deeper depths. Given the forecast of limited opportunities for California commercial fisheries, the Council recommended not including Alternative 1 as it could have potentially significant economic impacts on small entities. The actual impact of Alternative 1 on small entities is not quantifiable and is uncertain.

4.10 Certification statement by the head of the agency.

The agency finds per 5 U.S.C. § 605 (the RFA) that the proposed rule, if promulgated, would not have an adverse significant economic impact on a substantial number of small entities. The agency requests comments on the decision to certify this rule based on the conclusions laid out in the analysis above.

5 Magnuson-Stevens Act and FMP Considerations

5.1 Magnuson-Stevens Act National Standards

Below are the 10 National Standards as contained in the MSA, and a brief discussion of how each alternative is consistent with the National Standards, where applicable. In recommending a preferred alternative, the Council must consider how to balance the national standards.

National Standard 1 — Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

The biennial harvest specifications and management measures undertaken and described in the 2023-2024 Biennial Harvest Specifications and Management Measures EA, establish harvest levels consistent with National Standard 1 and the harvest management framework described in Chapter 4 of the Groundfish FMP. These harvest specifications and associated management measures work to prevent overfishing while achieving, on a continuing basis, optimum yield. Updated harvest specifications and management measures for the 2025-2026 biennium are currently under development and will also set harvest levels consistent with National Standard 1 and the harvest management framework described in the Groundfish FMP. This action would not revise the harvest management framework, or groundfish harvest limits for 2025-2026 or beyond. The proposed GEA under the FPA would protect groundfish habitat (indirectly) within the proposed closed areas. These areas could contribute to productive fish populations. The closure of this area may displace fishing effort, but the degree to which is expected to be limited, though unknown. Given the size of the proposed GEA, it would be unlikely that this action would prevent the non-trawl fishery from helping the groundfish fishery as a whole achieve optimum yield.

National Standard 2 — Conservation and management measures shall be based upon the best scientific information available.

The best scientific information available was used to select the proposed deep-sea coral research and restoration sites as outlined in Agenda Item H.2.a, ONMS Report 1, September 2023. Scientific experts in deep-sea coral research and restoration were provided with deep-sea coral location information, historical fishing data, and other background materials, when designing the proposed polygons for closure.

With regards to the fisheries impacts information, fish ticket, observer data, and VMS were used to estimate impacts of the proposed action on the socioeconomic environment. As discussed in Section 3.5, there is limited spatial information about the areas proposed for closure, given the lack of observer coverage and the small areas proposed to be closed. However, the best available historic fish ticket, observer data, and VMS data are used in this Analysis, and are the best indicators of historic importance of the areas to the larger fishery.

National Standard 3 — To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The Council develops and designates management units for groundfish, which include stocks, stock complexes, or geographic subdivisions thereof. The proposed action does not change any management units for groundfish. The alternatives considered would not result in stocks or stock units being managed differently throughout their range.

National Standard 4 — Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be; (A) fair and equitable to all such fishermen, (B) reasonably

calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The alternatives only apply to commercial groundfish bottom contact gear types fishing in the EEZ off the West Coast and new restrictions from this action would only result for non-trawl vessels. If the bottom trawl EFHCA currently present in the area(s) were to be removed, bottom trawl vessels would still be subject to closure. The proposed measures are reasonably calculated to promote conservation with limited impact on fishing activity and would not excessively burden the users of any particular gear type.

National Standard 5 — Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

Implementation of the GEA could have a negative impact on utilization of fishery resources in the non-trawl groundfish fisheries by closing areas to fishing. However, given the limited historical activity in the area and the ability to potentially shift to other areas, as well as the relative small size of the closure, it is likely that there will be limited impact on the utilization of the fishery resource.

National Standard 6 — Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

GEAs are designed in a manner in which they can be turned off at a future time, if the purpose for which they are implemented is no longer warranted. In the future, if (among other reasons) coral planting is not successful in the area, the GEA could be removed, thereby opening up opportunities to fishing vessels. GEAs allow for adaptive management based on future conditions. A proposed monitoring schedule was included by the Council to receive updates on the state of coral outplanting every three years after implementation for ten years following completion of future restoration. Such monitoring would inform the continuing need for the GEA.

National Standard 7 — Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The implementation of the new GEA would create new costs associated with implementing a GEA and enforcement costs for monitoring the closure, as well as costs to industry for avoiding the area. However, given the small size of the proposed closure relative to the California coast and the ability for enforcement to use VMS, the costs should be relatively minimal overall.

National Standard 8 — Conservation and management measures shall, consistent with the conservation requirements of the MSA (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of National Standard 2, in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

The FPA would create a new discrete fishery closure, which may have some degree of impact on fishing communities if vessels that deliver to those communities currently fishing in the proposed closures have less success fishing at other locations. Based on the analysis and public comment, it is likely that limited effort occurs in the FPA area and therefore the degree of impact is likely minimal. However, the degree of that impact is uncertain with regards to future opportunities with offshore areas becoming of greater importance to California fishing communities.

Deep sea coral communities are complex ecosystems that provide sources of food, shelter and spawning grounds for fish and invertebrates. They are reserves for biodiversity and more diverse marine ecosystems,

which are generally able to better withstand survival in changing conditions. In addition, the public derives benefits because natural marine sanctuaries such as MBNMS provide outreach on the importance of deep-sea coral communities through video webinars, school curriculum, teacher materials, exhibits in visitor centers, and posters. The proposed closures would generally support these benefits provided by the MBNMS and its coral communities.

National Standard 9 — Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

There are no expected impacts to bycatch of any species outside of those described in the 2023-2024 Harvest Specifications EA.

National Standard 10 — Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

There is no expected impact to the safety of human life at sea outside of that described in the 2023-2024 Harvest Specifications EA.

5.2 Section 303(a)(9) Fisheries Impact Statement

Section 303(a)(9) of the MSA requires that a fishery impact statement be prepared for each FMP or FMP amendment. A fishery impact statement is required to assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for (a) participants in the fisheries and fishing communities affected by the plan amendment; (b) participants in the fisheries conducted in adjacent areas under the authority of another Council; and (c) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery.

The RIR prepared for this plan amendment constitutes the fishery impact statement. The likely effects of the proposed action are analyzed and described throughout the RIR. The effects on participants in the fisheries and fishing communities are analyzed in the RIR (Section 3.3). The effects of the proposed action on safety of human life at sea are evaluated in Section 3.5, and above under National Standard 10, in Section 5.1.

The proposed action affects the groundfish fisheries in the EEZ off the West Coast, which are under the jurisdiction of the Council. Impacts on participants in fisheries conducted in adjacent areas under the jurisdiction of other regional management councils are not anticipated as a result of this action.

6 Other Applicable Laws

Executive Order 13175 Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 is intended to ensure regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At Section 302(b)(5), the MSA reserves a seat on the Council for a representative of an Indian tribe with Federally-recognized fishing rights from California, Oregon, Washington, or Idaho.

The proposed action and other alternatives have been developed through the Council process. Through the tribal representative on the Council, and the opportunities for public comment provided at Council meetings, the Tribes have had a role in developing the proposed action and analyzing the effects of the alternatives; therefore, the proposed action is consistent with E.O. 13175.

National Marine Sanctuaries Act

The National Marine Sanctuary Act (16 U.S.C. § 1431 et seq.) authorizes NOAA to identify and designate national marine sanctuaries as certain areas of the marine environment with special conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or aesthetic qualities. NOAA is authorized to develop regulations to protect, restore, and enhance sanctuary resources. Additionally, the purposes and policies of the NMSA include supporting, promoting, and coordinating scientific research on and restoration and enhancement of the natural resources within the national marine sanctuaries, including research on and the restoration of deep sea coral. The proposed action is consistent with these purposes and authorizations of the NMSA.

7 Preparers and Persons Consulted

Preparers

Jessi Doerpinghaus, Pacific Fishery Management Council

Kerry Griffin, Pacific Fishery Management Council

Contributors

Sage Tezak, Office of National Marine Sanctuaries

Persons *(and Agencies)* Consulted

Keeley Kent, National Marine Fisheries Service

Abbie Moyer, National Marine Fisheries Service

Megan Mackey, National Marine Fisheries Service

Karen Grimmer, Office of National Marine Sanctuaries
Shelby Mendez-McCoy, NEPA Coordinator, National Marine Fisheries Service
Corinna McMackin, General Counsel, National Marine Fisheries Service

8 References

Somers, Kayleigh A. et al. (2023). Fisheries Observation Science Program Coverage Rates, 2002-22. https://doi.org/10.25923/mm68-n944

Somers, Kayleigh A. et al. (2023). Fishing Effort in the 2002–21 U.S. Pacific Coast Groundfish Fisheries. https://doi.org/10.25923/fa7g-yp86