

How To Reform and Strengthen Fishery Habitat Protection

By Alexandra Carter, Margaret Cooney, Sung Chung, Carlos Rivero Lopez, and Miriam Goldstein July 2020



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Introduction and summary

It has been a tumultuous year for the fishing industry and the coastal communities that rely on it. The COVID-19 crisis closed restaurants and disrupted the global supply chain, making it difficult for fishermen to sell their catch. The Trump administration then opened federal waters to industrial aquaculture and rolled back protections for the Atlantic Ocean's only marine national monument.¹

The economic impact of these events was severe, and the outlook of long-term effects in many places is uncertain. The Trump administration has provided little aid to communities and has continued to pursue the failed trade policies that have directly harmed them.² These effects are only heightened by climate change-driven harm to fisheries.³

In order to prevent the worst effects of climate change and ecosystem collapse, scientists say that 30 percent of America's land and oceans must be protected by 2030.⁴ Yet while U.S. fisheries managers say they value and protect habitat, many of them have consistently opposed protecting it. Just last month, all of the U.S. fishery management councils, which are responsible for managing fishing in federal waters, asked President Donald Trump to allow industrial fishing in all U.S. marine national monuments.⁵

In their letter, the councils said that "fisheries management decisions should be made using the robust process established by the MSA [Magnuson-Stevens Act] and successfully used for over forty years." But does the United States' strong system of fisheries management actually lead to habitat protection?

While the councils and states have the ability to protect ocean habitat, they mostly have not done so. With the exception of the North Pacific, fisheries managers have closed few areas to commercial fishing, and 75 percent of the restrictions that do exist result in little habitat protection. Alaska and the West Coast have more protection, while the East Coast and the Caribbean have very little. The limited extent to which meaningful habitat protections are enacted by the councils or states makes clear that, without significant changes to the law or its application, these protected areas are not likely to be an adequate substitute for a more geographically representative and comprehensive system of marine protected areas (MPAs).

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The role of essential fish habitat in federal fisheries management

In the United States, fisheries in federal waters are managed by the Magnuson-Stevens Fishery Conservation and Management Act (MSA).⁶ When the MSA was originally passed in 1976, it established eight regional fishery management councils comprised of assorted stakeholder, agency, and fishery representatives that are tasked with creating fishery management plans (FMPs) for marine fisheries in their regions. The councils are designed to allow better relationships between governments and regional stakeholders and encourage diverse public input in the management of fisheries.⁷ As fishery management strategies and technology have evolved, overfishing—removing fish faster than they can reproduce—has become a widespread problem. Therefore, under the MSA's 1996 and 2006 reauthorizations, sustainable management became more of a priority and the fishery management councils' mandated goal of recovering overfished stocks and preventing overfishing was significantly strengthened. Fisheries habitat protections were also identified as a concern that needed to be addressed.⁸

To that end, the 1996 reauthorization of the MSA requires that the fishery management councils—using guidance established by the National Marine Fisheries Service—describe and identify essential fish habitat (EFH) for each species or group of species managed by an FMP.⁹ Currently, the councils are also required to consider how such habitat can be conserved and, where practicable, enact measures to protect it. For example, the councils may recommend limitations on fishing through temporary area closures and specific gear restrictions.

It is important to note that EFH measures are not permanent, and the councils can only recommend limitations on nonfishing activities, such as drilling for oil and gas, rather than enforce such limitations.¹⁰ Because EFH protections are temporary and cannot limit other extractive activities, EFH areas do not meet the International Union for Conservation of Nature's definition of what it means to be an MPA.¹¹ The International Union for Conservation of Nature is the leading international organization on safeguarding the natural world.

Defining MPAs, EFH, and state actions

There are a variety of ways fishery managers, states, federal agencies, and the president can designate habitat protections. Each type of protection is designated, defined, and implemented differently. These are the most commonly discussed methods of protection discussed within this report:

- Marine protected area. An MPA is a clearly defined geographic space managed for longterm conservation.¹² MPAs are categorized by degree of protection. The MPA Guide—the leading classification system in the United States—classifies MPAs into four different levels of protection.¹³ Highly and fully protected MPAs—the two strongest classifications—have been shown to be most effective because they prohibit commercial extraction such as fishing, drilling, and other actions.¹⁴ In this report, the authors used all MPAs in the U.S. exclusive economic zone (EEZ)—including state water designations, sanctuaries, and monuments—as listed in the MPAtlas database and directly described by the Marine Conservation Institute.
- Essential fish habitat. The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Fishery management councils have the authority and are required within the MSA to define the characteristics of habitat necessary for the health of fishery resources managed by the councils' FMPs. EFH areas are designated by councils as important to the survival of commercially and recreationally important species. However, it is important to note that EFH areas designated by councils are not necessarily protected in the way that the authors define in this report. The designation itself is the only legal requirement; it is up to the councils to decide if other fishing-restrictive or habitat-protective actions are practicable.¹⁵ The authors only analyzed EFHs for this report that met the report's methodological standards, otherwise qualified as "fishing-restrictive EFH." From that subset, the authors divided EFH into four classifications of level of protection: minimal, moderate, significant, and complete.
- **State actions.** States have jurisdiction over fisheries and many fishing-restrictive regulations in the area between the coast and 3 miles or 9 miles seaward, depending on the state. Although distinct from EFH authority under the MSA and MPAs, some states have chosen to designate what this report terms "fishing-restrictive areas" within their waters that are similar to EFH. While the councils must designate and describe, but do not have to enact, limitations on fishing in EFH if they do not deem it practicable, states are required neither to designate nor to limit fishing in any areas. California, for example, made this designation through the state's Marine Life Protection Act.¹⁶ State actions, although typically covering a smaller area than federal actions, can have a significant impact on fishery resources because nursery areas and other important habitats for many species are located nearshore.

In this report, the authors grouped state actions on fishing-restrictive areas and federal fishingrestrictive EFH into one analysis. All state actions included in the analysis were sorted into the same classification system as fishing-restrictive EFH—minimal, moderate, significant, and complete.

The role of essential fish habitat in federal waters

Fishery management councils are required to designate EFH in each fishery management plan and minimize fishing impacts on EFH where practicable. The practicable legal standard has been interpreted by some councils to mean that any restriction on fishermen is impractical, most likely because the fishing industry representatives who comprise the bulk of the councils rarely wish to go through an arduous process in order to limit their own access to specific areas. This means that minimization of fishing impacts on EFH is rarely considered practicable, and the councils have recommended limiting fishing activities in only a small fraction of EFH areas.¹⁷ This report will call such areas "fishing-restrictive EFH."

FIGURE 1 Essential fish habitat in the U.S. exclusive economic zone

All essential fish habitat 🛛 📕 Fishing-restrictive essential fish habitat



Sources: National Oceanic and Atmospheric Administration, "Nationwide Essential Fish Habitat," available at https://www.habitat.noaa.gov/protection/efh/newlnv/maps/nationwide_efh-min.png (last accessed June 2020); National Oceanic and Atmospheric Administration, "Nationwide EFH Areas Protected From Fishing," available at https://www.habitat.noaa.gov/protection/efh/newlnv/maps/nationwide_efha-min.png (last accessed June 2020); National Oceanic and Atmospheric Administration, "Nationwide EFH Areas Protected From Fishing," available at https://www.habitat.noaa.gov/protection/efh/newlnv/maps/nationwide_efha-min.png (last accessed June 2020); National Oceanic and Atmospheric Administration, "Nationwide EFH Areas Protected From Fishing," available at https://www.habitat.noaa.gov/protection/efh/newlnv/maps/nationwide_efha-min.png (last accessed June 2020); National Oceanic and Atmospheric Administration, "Nationwide EFH Areas Protected From Fishing," available at https://www.habitat.noaa.gov/protection/efh/newlnv/maps/nationwide_efha-min.png (last accessed June 2020); National Oceanic and Atmospheric Administration, "Nationwide EFH Areas Protected From Fishing," available at https://www.habitat.noaa.gov/protection/efh/newlnv/maps/nationwide_efha-min.png (last accessed June 2020); National Oceanic and Atmospheric Administration, "Nationwide EFH Areas Protected From Fishing," available at https://www.habitat.noaa.gov/protection/efh/newlnv/maps/nationwide_efha-min.png (last accessed June 2020); National Oceanic and Atmospheric Administration, "Nationwide EFH Areas Protected From Fishing," available at https://www.habitat.noaa.gov/protection/efh/newlnv/maps/nationwide_efha-min.png (last accessed June 2020); National Oceanic atmospheric Administration, "Nationwide EFH Areas Protected From Fishing," available at https://www.habitat.noaa.gov/protection/efh/newlnv/maps/nationwide EFH Areas Protected From Fishing," available at https://www.habitat.noaa.gov/protection/efh/newlnv/maps/nationwide EFH Areas Protected From Fishing,

The requirement that fishery management councils designate EFH—combined with the lack of a requirement for the councils to implement fishing-impact restrictions for the EFH they themselves designate—has ironically resulted in the designation of almost all U.S. federal waters to be designated as EFH. However, very few areas have enforceable restrictions on fishing activity in the so-called essential habitat. In other words, although nearly the entire U.S. exclusive economic zone is considered essential, the term has very little meaning.

Fishing-restrictive EFH, where the councils have both designated an EFH area and taken management action to restrict certain fishing activities in the area, is not widely used—as noted above—but tends to include limitations on harvesting, such as gear restrictions and closed areas.

The councils do have the authority under the MSA to comment on and make recommendations to the U.S. secretary of commerce regarding any activities by other federal agencies that may affect the habitat of a fishery under the council's jurisdiction.¹⁸ However, the consultation provisions do not require that other federal agencies avoid negative impacts on EFH, nor do they allow the National Oceanic and Atmospheric Administration (NOAA) to prevent such impacts from taking place.

The role of essential fish habitat in U.S. ocean habitat protection

The Center for American Progress analyzed the location of most fishing-restrictive areas in the United States in state and federal waters, including fishing-restrictive EFH; marine protected areas, including marine national monuments or national marine sanctuaries; and other protected designations that are fishing-restrictive. The authors also placed each protected area within the geographic jurisdiction of the most appropriate region and classified each area according to the level of protection to show how regions differ in use of these protective tools. These data were compiled using the Marine Conservation Institute's MPAtlas database and the NOAA EFH database in January 2020, then updated to incorporate changes in California's EFH and the rollback of the Northeast Canyons and Seamounts Marine National Monument.

The authors defined minimum protections as the lowest level of protections, such as relatively minor modifications to existing fishing gear. Minimum protections include prohibiting uncommon uses for the area or instituting relatively minor gear specifications, such as requiring a weak link in tickler chains in the Gulf of Mexico for trawl vessels. Moderate protections are defined as prohibiting a broad category of gear, such as the longline restrictions in the Gulf of Mexico and areas closed to mobile bottom gear on the West Coast. Significant protections were defined as prohibiting most commercial fishing activities, such as in the areas in New England that prohibit all fishing activity except stationary bottom contact gear such as pots and traps. Complete protections were defined as prohibiting all commercial fishing, such as in the Arctic Management Area in the North Pacific.

In Figure 2, the authors analyzed fishing-restrictive EFH and state actions as a percentage of all the fishing-restrictive EFH and state actions in the United States, and in Figure 3, they analyzed fishing-restrictive EFH, state actions, and MPAs as a percentage of all three types of designations, not as a percentage of the area covered by such designations in each region. This analysis shows the relatively unequal distribution of the different types of protections used in each region. See the Methodology section at the end of this report for additional details.

Overall, nearly 60 percent of all fishery management council- or state-enacted fishing-restrictive area designations in the United States are located in the Pacific Ocean. The North Pacific region, which covers Alaska, has designated more than 3 million square kilometers as fishing-restrictive area—the most area of any region. Even in the North Pacific region, which represents a high percentage of all fishing-restrictive areas nationwide, in part due to the vast size of the region, the majority of the protected areas have only a "minimum" level of protection. The Pacific states and the Pacific Council, which cover California, Oregon, and Washington, have designated just more than 1.25 million square kilometers as fishing-restrictive areas.—the second-most area of all regions.

With the exception of the North Pacific, the councils have closed very few areas to commercial fishing. The North Pacific accounts for more than 99 percent of complete EFH protections, most of which is in the Arctic Management Area that encompasses the Chukchi and Beaufort seas.¹⁹ Outside the North Pacific, the only other areas that have received complete EFH protections are the Pansy Bayou and the Tortugas Marine Reserve in the Gulf of Mexico, which together cover 231.34 square kilometers, and the Pelican Spit and the Satilla River Marsh Island in the South Atlantic region, which total 0.68 square kilometers. No other region in the United States has EFH areas with complete protections.

FIGURE 2 Across the country, fisheries regulators most often choose minimum levels of protection

Distribution of fishing-restrictive areas* across region and level of protection, shown as a percentage of all such areas



* Fishing-restricted areas include both essential fish habitat and state actions.

Sources: Center for American Progress analysis of Marine Conservation Institute, "MPAtlas," available at http://www.mpatlas.org/map/mpas/ (last accessed June 2020); National Oceanic and Atmospheric Administration, "Marine Protected Areas," available at https://marineprotectedareas.noaa.gov/datanalysis/mpainventory/mpaviewer/ (last accessed June 2020); National Oceanic and Atmospheric Administration, "Essential Fish Habitat Manner" available at https://www.habitat.noaa.gov/protection/efh/efhmanner/ (last accessed June 2020). The West Pacific region has designated the least amount of fishing-restrictive EFH and other fishing-restrictive areas of all regions—just more than 40,000 square kilometers. However, the West Pacific contains more than 99 percent of highly or fully protected marine protected area in the United States because of the four large remote MPAs located there.²⁰

Most other regions lack both fishing-restrictive areas, EFH or state actions, and large highly or fully protected MPAs. President Trump's recent rollback of the Northeast Canyon and Seamounts Marine National Monument removed 84 percent of highly or fully protected MPAs from the waters of the contiguous United States, leaving less than 1 percent of those waters with the highest levels of MPA protections.²¹ The lack of protected waters is most evident in the South Atlantic and Caribbean regions. Even including MPAs, these two regions combined contain less than 10 percent of all fishing-restrictive and protected areas in the United States.

This disparity means that more than 71 percent of all U.S. ocean areas protected from fishing—either as a result of fishing-restrictive EFH, state actions, or MPA designations—are located in the Pacific Ocean. Even accounting for the different sizes of each region, the disparities between area protections leave the habitats in some areas better protected while others are sorely lacking.

FIGURE 3

Marine protected areas (MPAs) do not make up for lack of fishing-restrictive areas



Distribution of fishing-restrictive areas and MPAs across region and level of protection, shown as a percentage of all such area

Sources: Center for American Progress analysis of Marine Conservation Institute, "MPAtlas," available at http://www.mpatlas.org/map/mpas/ (last accessed June 2020); National Oceanic and Atmospheric Administration, "Marine Protected Areas," available at https://marineprotectedareas.noaa.gov/datanalysis/mpainventory/mpaviewer/ (last accessed June 2020); National Oceanic and Atmospheric Administration, "Essential Fish Habitat Mapper," available at https://www.habitat.noaa.gov/protection/efh/efhmapper/ (last accessed June 2020).

Of the few EFH areas that are fishing-restrictive, most—75 percent—are minimally protected. While these measures are steps in the right direction, they consist of relatively minor modifications to existing gear and so offer relatively little habitat protection. For example, the Gulf of Mexico Fishery Management Council requires bottom trawl gear to include at least one link in their tickler chain that is weaker than the rest. Theoretically, this allows the chain to break if it gets tangled or caught on bottom habitat such as coral. However, to prevent costly gear loss, most boats had already installed a weak link prior to the EFH requirement.²² Additionally, because the regulations do not define how weak the link must be, even trawler tickler chains with a weak link are likely to destroy most corals.²³

FIGURE 4

Majority of fishing-restrictive essential fish habitat (EFH) and state actions have minimal protections

Minimal75.50%Moderate16.86%Significant0.99%Complete6.66%

Distribution of fishing-restrictive EFH and state actions by level of protection

Sources: Center for American Progress analysis of Marine Conservation Institute, "MPAtlas," available at http://www.mpatlas.org/map/mpas/ (last accessed June 2020); National Oceanic and Atmospheric Administration, "Marine Protected Areas," available at https://marineprotectedareas.noaa.gov/dataanalysis/mpainventory/mpaviewer/ (last accessed June 2020); National Oceanic and Atmospheric Administration, "Essential Fish Habitat Mapper," available at https://www.habitat.noaa.gov/protection/efh/efhmapper/ (last accessed June 2020).

The limited extent to which meaningful habitat protections are enacted by states or councils makes clear that, without significant changes to the law or its application, these protected areas are not likely to be an adequate substitute for a more geographically representative and comprehensive system of MPAs. However, EFH and state actions do not need to be MPA substitutes in order to be effective. If EFH protections and the consultation process with other agencies could be more widely used to restrict both fishing and other extractive activities—such as oil drilling and seabed mining—and state designations were used in concert with federal ones, these areas could prove to be a powerful tool to enhance fisheries by conserving the important habitat upon which fisheries depend.

The West Pacific Bottom-Trawl Ban and the Hind Bank

Two notable fishing-restrictive areas have been excluded from this analysis: the West Pacific Bottom-Trawl Ban, which spans the entire West Pacific Region, and the Hind Bank, a no-take marine conservation district in the Caribbean. Neither of these areas are listed in the National Oceanic and Atmospheric Administration's EFH Mapper or in NOAA's lists of fishing-restrictive EFH for each region, which were the datasets used to build the federal waters database for this report. Both of these areas were not designated under EFH regulations, so would not be affected by this report's findings or recommendations.

Different levels of success of fishingrestrictive protections: 3 case studies

Since the EFH provisions were written into law, the fishery management councils and states have worked together in a variety of ways to protect important fishery habitats. While each region is unique, they can all offer some lessons in how essential fish habitat and other state actions can be used with varying degrees of success. The cases below are representative of a range of EFH uses and outcomes.

Case study 1:

An EFH designation without specific protections or state action is not effective The goliath grouper was a popular fish for commercial and recreational fisheries in Florida in the 1970s. However, by the late 1980s, the stock was so diminished that fishermen persuaded the state to suspend the fishery.²⁴ In 1990, removal of goliath grouper was prohibited in both federal and state waters,²⁵ but by 1991 populations had fallen so low that they were considered for listing under the Endangered Species Act and later declared a species of concern. In the past 30 years, goliath grouper has failed to recover.²⁶ The most recent stock assessment of goliath grouper from 2016 showed positive recovery progress, but the review panel rejected the final assessment because of a lack of quality data,²⁷ meaning that the current population size of the goliath grouper is still not large enough for scientists to declare the species recovered.²⁸

Goliath groupers have very specific site and habitat requirements. Juvenile goliath groupers rely on mangrove habitat and show greater rates of growth in goodquality habitat and water.²⁹ Adults migrate out to reefs and exhibit mass spawning during specific times at recurring places each year.³⁰ This predictable and traceable site fidelity has led scientists to suggest that protecting mangroves and spawning sites would be highly beneficial for the recovery of this species.³¹ In fact, it has been shown that mangrove habitat is vital to goliath grouper recovery.³²

Unfortunately, the goliath grouper instead has been made into an example of how toothless the existing state habitat protection and EFH designation process can be. As required by the Magnuson-Stevens Act, the South Atlantic Fishery Management Council (SAFMC) has described and identified EFH for part of the goliath grou-

per's historic range. Goliath grouper in the region are managed within a large group of similar species called the Snapper-Grouper Complex.³³ The SAFMC defined mangroves and grouper spawning grounds as EFH for the complex but did not take sufficient steps to minimize impacts from fishing in those areas because the council did not want to limit access to fishermen. These areas, while designated EFH, did not meet this report's standards for fishing-restrictive EFH.³⁴

Because EFH designations alone do not trigger any fishing-restrictive regulations, they have not been enough to encourage the recovery of goliath grouper. While other threats, including bycatch and water quality issues, still exist, research suggests that fishing-restrictive actions by the state or highly or fully protected marine protected areas in state waters could produce the improved high-quality habitat that goliath groupers need to show clear recovery signals in the next stock assessment.³⁵

Case study 2:

EFH closures can significantly benefit nontarget species

Closure of areas to groundfish fishing in New England have had some success, although not necessarily for the populations for which they were intended. For the region's haddock fishery, seasonally closed areas to protect spawning aggregations have been a staple since 1970 and were expanded in 1985 to protect spawning yellowtail flounder as well.³⁶ However, these measures did not rebuild the two stocks. In 1994, three large areas identified as being historically important to groundfish spawning and nursery habitat on George's Bank were closed year-round to any gears capable of retaining groundfish.³⁷ The groundfish closures and gear restrictions that were in place from 1994 to 1998 included restrictions on scallop dredges and other gears that were known to catch groundfish accidentally as bycatch.³⁸

While closures were intended to help groundfish stocks, they greatly benefited the Atlantic sea scallop, which in 1998 was up to 14 times more abundant in the closed areas than in adjacent open areas.³⁹ By implementing moderate-level EFH designations of year-round gear restrictions, the Atlantic sea scallop population was able to flourish. Today's minimal-level rotating area closures that manage the New England sea scallop fishery and the New Bedford scallop fishery contribute to maintaining these fisheries as the most profitable in the United States.⁴⁰ The closures have shown that protecting EFH for targeted species can have significant benefits for nontarget species and that while minimal EFH is sufficient to maintain some species, moderate EFH is more effective in improving the health of fishery resources.

Case study 3:

EFH, MPAs, and state actions can work together to protect habitat and rebuild stocks

Groundfish, including many west coast species of rockfish, are a commercially and recreationally important group of species in California.⁴¹ In 1999, as fishing pressure increased, scientists showed that fishing-restrictive areas could be beneficial to rebuilding and sustaining the threatened groundfish fishery populations in the region because most rockfish exhibit disproportionately higher reproductive output from larger, older females, and juvenile rockfish have been shown to be more common in areas associated with protections from fishing effort.⁴²

When 10 groundfish species were declared overfished between 1999 and 2017,⁴³ rockfish were a good candidate for habitat protection. Along with the mandated plans to rebuild the overfished stocks,⁴⁴ state and federal agencies created fishing-restrictive areas for particular rockfish species of interest, such as cowcod.⁴⁵ For example, California and the Pacific Fishery Management Council created Cowcod Conservation Areas off the coast, where cowcod are most abundant, and designed them to limit the catch of cowcod by limiting fishing to shallower waters.⁴⁶ In 2002, the state of California designated multiple no-take MPAs to create a network of protections known as the Channel Island Marine Sanctuary. These MPAs, which were later expanded in 2006 and 2007, are now jointly managed by the National Oceanic and Atmospheric Administration and California in federal and state waters, respectively, as the Channel Islands National Marine Sanctuary.⁴⁷ While not created under an EFH, these closures show that when fishery management councils work with states to restrict fishing, they can produce significant results for the benefit of target species.⁴⁸

As a result of coordination between state and federal managers, which reduced fishing pressure through a network of designated fishing-restrictive areas and implemented highly-to-fully protected MPAs, nine of the 10 stocks that were declared overfished in 1999 were rebuilt.⁴⁹ More fish meant more fishing activity, which generated 900 jobs and \$60 million in income.⁵⁰ With stocks rebuilding, NOAA eased fishing regulations in 2018 and reopened 7,769 square kilometers of preferred fishing areas to commercial and recreational fishermen in 2020.⁵¹

The reopening of preferred rockfish fishing areas allowed NOAA to collaborate with the state and local interest groups to close another 363,030 square kilometers to mobile bottom gear, other gear, or certain fishing types.⁵² While many of these areas are very deep and unlikely to have been fished with bottom trawling in the

past, the action of freezing the footprint of fishing impacts on habitat in the future should not be overlooked. These closures, designed to protect sensitive deep-sea habitats, are included in this report's analysis as significant and moderate closures, depending upon the detail of each specific area's regulations.

By creating a network of council-enacted EFH and state MPAs that worked in concert, this region was able to rebuild rockfish to great economic and ecological benefit. This is a particularly impressive accomplishment given the slow growth of many rockfish species. Now, the regional fisheries enjoy better catches and fishing grounds closer to shore, and other fishing-restrictive areas protect the sensitive habitats that support ocean health.

Policy recommendations

The authors' analysis also shows that regional EFH implementation is uneven, leaving some regions less protected than others. States play a vital role in fishery management and ocean habitat conservation because they have jurisdiction over some of the most diverse, important nearshore areas, which many fish rely on for spawning and nursey grounds.⁵³ For the best chance of securing sustainable fishery resources and coastal ecosystems, nearshore habitats in state waters in every region must be protected by the states that oversee them in concert with larger protected area systems, including fishing-restrictive EFH and marine protected areas in federal waters.

In addition, the EFH provisions of the Magnuson-Stevens Act have the potential to be a powerful tool that could be used to greatly aid in the recovery and resilience of key species and habitats if the law were changed to mandate that the fishery management councils and NOAA protect important habitats while ensuring the benefit of fisheries. Here, the authors suggest two statutory changes that would strengthen the ability of managers to protect key habitats through improved use of EFH.

Require essential fish habitat to be treated as essential

Since EFH was first required by the MSA, it has been used as an informative tool for identifying habitats important to American fisheries' recovery and management. However, once EFH is designated, the fishery management councils are only required to minimize the adverse effects on this so-called essential habitat to the extent practicable. The reality is that very few councils have found it practicable to do so.

Some councils, such as in the case of the California groundfish above, have implemented fishery management in coordination with fishing-restrictive EFH, negotiating with fishermen on deals to implement closures in some areas in exchange for restoring fishing privileges in others.⁵⁴ Other councils have done the minimum required by the MSA, which is to describe EFH areas in their fisheries management plans and then declare any further action impracticable.

Because of the political pressure and short-term economic impacts of the legal practicability standard, councils often fail to close fishing grounds or take other management efforts that could have any adverse effect on the fishing industry. However, if these habitats are actually essential for the recovery and management of American fishery resources, then it is time to start treating them as such. With more than 99 percent of the area of U.S. MPAs concentrated in the West Pacific and 42 percent of EFH area concentrated in the North Pacific, many regions remain vulnerable to habitat degradation. Improved EFH protections would provide the largest benefit and best chances of long-term economic prosperity to those council regions with the fewest protected habitats and the lowest coverage of fishing-restrictive area.⁵⁵

Congress should amend the MSA to require all EFH designations to have fishingrestrictive protections and metrics of success for their conservation and management. Because most of the U.S. exclusive economic zone is already designated as EFH, a congressional requirement to make EFH fishing restrictive would result in fewer areas being designated, and those that are designated would have concrete and specific protections. This would help councils prioritize and protect the most important habitat while cutting excess designations.

Congress should also mandate that the EFH designations be regularly evaluated against specific goals for success. The National Marine Fisheries Service and the fishery management councils could then work together to prescribe localized specific metrics and timelines to measure success for fishing-restrictive EFH within each fisheries management plan.

These recommended requirements—and all existing EFH designations—should also be periodically reviewed and revised by the councils to ensure that they are meeting their goals.

EFH consultation improvement

The MSA has few requirements for other federal agencies to consult with NOAA on proposed actions that would affect EFH. Currently, the consultation provisions do not require that other federal agencies avoid negative impacts on EFH or allow NOAA to prevent such effects from taking place. While fishing can have a significant impact on ocean habitats, it is not the only activity that can cause damage. EFH provisions in the MSA should be improved to better protect EFH from all types of federally regulated impacts.

Congress should amend the MSA to require that federal agencies avoid impacts on EFH from nonfishing actions such as oil and gas drilling or deep-sea mining. If the effect of federal actions on EFH cannot be avoided, the federal agency should be required to mitigate them. The impact of federal activities would be assessed by NOAA either during the statutorily required environmental review process for all major federal projects under the National Environmental Policy Act or through other means if NEPA review is not required.⁵⁶

Making these changes to the EFH provisions within the MSA would change the way EFH is used in management. By creating a legal mandate for fishing-restrictive EFH with metrics for success and real consultation requirements to protect these areas from nonfishing impacts, the provision would become a powerful tool for strengthening the councils' long-touted conservation priorities. These recommendations, used together with a robust network of highly-to-fully protected MPAs, would truly put the United States at the forefront of ocean habitat protection and long-term climate resilience.

Conclusion

The vast majority of U.S. waters have insufficient protections for ensuring a healthy future for American fisheries and oceans. While EFH should not be considered equivalent to MPAs, a system of strategic and well-implemented EFH areas would be a powerful tool to conserve America's fishery resources. As climate change drives unprecedented change across the ocean, and COVID-19 continues to damage coastal communities and seafood supply chains, expanding and strengthening a diverse and broad network of place-based protections will help fish stocks and ocean ecosystems weather the current and coming storms.

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Acknowledgments

The authors would like to thank Jean Flemma, director of the Ocean Defense Initiative and co-founder of the Urban Ocean Lab; Michael Gravitz, director of Policy and Legislative Affairs with the Marine Conservation Institute; Amy Kenney of the National Ocean Protection Coalition; Lance Morgan, president and CEO of the Marine Conservation Institute; and Beth Pike, database manager for the Atlas of Marine Protection at the Marine Conservation Institute.

Methodology

This analysis of EFH and other areas protected from fishing by the fishery management councils was compiled from datasets provided by the Marine Conservation Institute's (MCI) MPAtlas, the National Oceanic and Atmospheric Administration's MPA Inventory, state databases, and personal communication from NOAA and fishery management council staff members. Where MCI data conflicted with NOAA EFH data, the authors used the NOAA EFH data. Where MCI data conflicted with state data, the authors used the state data. These data were compiled in January 2020 and then updated to incorporate changes in California's EFH and the rollback of the New England Canyons and Seamounts Marine National Monument. The dataset includes state fishing-restrictive areas and every EFH designation—including any Habitat Areas of Particular Concern—that has protections from fishing, which the authors defined as a spatial area that has a defined limitation on fishing activity. This includes temporary, seasonal, or permanent closures; species-specific or general restrictions; and limitations on gear, depth, or types of fishing, such as commercial versus recreational. From this list, the authors assigned each area to the appropriate regional council area based on the legal definition of council jurisdictions. Where an area crossed the border of two jurisdictions, the authors assigned it to the council in which the majority of the area was located. Where an area was designated by one council but was located in a different council's jurisdiction, the authors assigned that area to the designating council, such as in the case of the Mid-Atlantic Council's designation of Oceanographer and Lydonia canyons EFH areas. This analysis is broader than EFH, as the authors also looked at marine protected areas, state actions, and other protected areas in state and federal waters such as council actions under the MSA that were place-based, but not technically EFH. For example, the analysis includes fishery management areas listed in the MPAtlas and the NOAA MPA Viewer at the time the data were compiled. All areas included in the data were verified with governmental data such as a NOAA database or state website. Areas that could not be verified using these sources were not included.

The authors also assigned each EFH or state action designation a level of protection: minimal, moderate, significant, or complete. The authors defined minimal protections as the lowest level of protections, such as relatively minor modifica-

tions to existing fishing gear. The minimum protections include prohibiting uncommon uses for the area or instituting gear specifications that are already voluntarily used throughout a majority of local fleets. Moderate protections were defined as prohibiting a broad category of gear, such as the longline restrictions in the Gulf of Mexico and areas closed to mobile bottom gear on the West Coast. Significant protected areas were defined as prohibiting most commercial fishing activities, such as in the areas in New England that only allow stationary gear such as pots and traps. Complete protection areas were defined as prohibiting all commercial fishing, such as in the case of the Arctic Management Area in the North Pacific. Recreational fishing-restrictive area designations were classified according to the same methodology as commercial-specific, fishing-restrictive areas. Many EFH restrictions did not apply to recreational gear types because recreational and commercial fishing styles often do no use the same types of gear or because recreational fishing was expressly permitted in the area; however, this did not affect the authors' classification of the EFH area. Subsistence fishing was not included in the analysis of this report.

All MPA data were sourced from the MPAtlas database and directly by the MCI.⁵⁷ These data include a list of every MPA, marine national monument, and sanctuary in the United States and each designation's calculated marine area. Data pertaining to the Northeast Canyons and Seamounts Marine National Monument commercial fishing regulatory rollback were synthesized using the same MPA data and information in the June 5, 2020, presidential proclamation.⁵⁸

All areas were compiled into one data set, regardless of spatial overlap of the areas. This means that areas protected by several different protection types are overrepresented. The actual footprint of protected area in the U.S. EEZ including state waters, accounting for overlap, is smaller than what is shown in this report.

Due to the rebuilding of many groundfish on the West Coast, the Pacific Fishery Management Council and NOAA implemented a new amendment to the Pacific Coast Groundfish Fishery Management Plan, which went into effect in January 2020.⁵⁹ This amendment opened up trawl rockfish conservation areas in California and Oregon, changed the region's EFH conservation areas to include large portions of the Southern California Bight, and implemented a new protected area seaward of 3,500 meters in depth. These changes were accounted for in the authors' dataset through personal communication from NOAA, fishery management council staff, and other experts.⁶⁰

* **Update, July 9, 2020:** This report has been updated to clarify the kinds of protected areas considered in this analysis.

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