

impacts habitat that is essential to a number of species under the Council's management. The proposed actions will have a positive impact on the physical environment by limiting removal of pelagic sargassum. One firm that has harvested pelagic sargassum may be forced to cease operation unless an alternative source of pelagic sargassum can be economically accessed. The proposed actions are not expected to have a substantial adverse impact on public health or safety and are not expected to affect adversely a marine mammal population.

The Council prepared a FEIS for the original version of the FMP; a notice of its availability was published on October 15, 1999 (64 FR 55912). The comment period ended on November 15, 1999.

After the Council revised the original FMP, NMFS prepared a Supplemental DEIS; a notice of its availability was published on January 11, 2002 (67 FR 1462). The comment period ended on February 25, 2002.

The current FEIS is included in the FMP. The basic conclusions regarding the environmental impacts described in the Supplemental DEIS and the current FEIS are not significantly changed from the DEIS. It should be noted however, that no harvest of sargassum has been recorded since 1997 by the one firm. No directed fishery for sargassum currently exists in the South Atlantic.

Under section 7 of the Endangered Species Act, NMFS completed a consultation on the effect of the sargassum fishery on listed species, including loggerhead, green, leatherback, hawksbill, and Kemp's ridley sea turtles. The biological opinion (BO), dated March 21, 2003, concludes that the sargassum fishery, as proposed to be managed by the FMP, would not likely jeopardize the continued existence of these sea turtle species. The BO sets a level of incidental take and reasonable and prudent measures necessary and appropriate to minimize impacts of incidental take of sea turtles. This proposed rule would: limit the harvest or possession of pelagic sargassum in or from the EEZ off the southern Atlantic states to 5,000 lb (2,268 kg) annually; restrict fishing for pelagic sargassum in the South Atlantic EEZ to an area not less than 100 nautical miles offshore of North Carolina and to the months of November through June; require vessel owners or operators to accommodate NMFS-approved observers on all pelagic sargassum fishing trips; and restrict the mesh and frame sizes of nets used to harvest pelagic sargassum. The BO concludes that adoption of these measures would

be beneficial to sea turtle populations because it would regulate and limit a fishery that was previously prosecuted without restrictions; limit direct take of sea turtles by the fishery; and limit loss of important pelagic habitat.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), based on the RIR, for this proposed rule. A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. The objectives of the proposed rule are: establish a management structure to manage sargassum habitat; reduce the impact of the sargassum fishery on essential fish habitat; and reduce the potential for conflict. The proposed rule would: prohibit all harvest and possession of sargassum from the South Atlantic EEZ south of the latitude line representing the North Carolina/South Carolina border (34° N. lat.); prohibit all harvest of sargassum from the South Atlantic EEZ within 100 nautical miles of shore between the 34° N. lat. line and the latitude line representing the North Carolina/Virginia border; limit harvest of sargassum from the South Atlantic EEZ to the months of November through June; establish an annual total allowable catch (TAC) of 5,000 lb (2,268 kg) landed wet weight; require that a NMFS-approved observer be present on each sargassum harvesting trip; and require that nets used to harvest sargassum be constructed of 4-inch (10.2-cm) stretch mesh or larger fitted to a frame no longer than 4 ft by 6 ft (1.2 m by 1.8 m). This action is being considered because sargassum harvest represents removal of essential fish habitat or important developmental or foraging habitat for other federally managed species including threatened/endangered sea turtles; no management structure exists to protect sargassum; potential conflicts could arise if harvest occurs where recreational fishing is occurring; and limited information exists regarding distribution, production, and ecology of sargassum. This proposed rule would limit expansion of harvesting capacity.

The proposed rule would require a NMFS-approved observer on board any vessel in the sargassum fishery to monitor harvest of sargassum and associated bycatch. No duplicative, overlapping or conflicting Federal rules have been identified.

No directed fishery for sargassum currently exists in the South Atlantic. Therefore, no small business entities will be impacted by the proposed rule. One small business entity was an historical participant in the fishery. This firm harvested an average of 14,333 lb (6,501 kg) wet weight annually (1995–

1997 average harvest), valued at \$43,000 per year, and employed three persons on a full-time basis and other workers on an as needed, part-time basis. A total of 52 trips were made between 1976 and 1997 resulting in the harvest of 448,000 lb (203,209 kg) wet weight (44,800 lb (20,321 kg) dry weight) of sargassum. Harvest peaked at 200,000 lb (90,719 kg) wet weight in 1990. The average harvest over the entire 1976–1997 harvest period was 8,615 lb (3,908 kg) wet weight per trip. Harvest was conducted either through contract with commercial finfish fishing vessels that harvested sargassum in conjunction with their regular fishing trip, or through the use of a converted 63-ft (19.2-m) snapper-grouper vessel acquired to conduct directed harvest trips. No information on harvesting or processing costs is available. Since a small business entity in the commercial fishery is defined as a firm that has annual gross receipts not in excess of \$3.5 million, the historical firm, had it remained in the fishery, would be classified as a small business entity. However, no harvest by this firm or any other business entity has been recorded since 1997. The harvest that was collected in 1990 was stockpiled and processed over the 1990–1994 period, so no harvest occurred from 1991–1994. The harvest history for the last years of recorded harvest, 1995–1997, does not appear sufficient to have supported similar stockpiling behavior. It is assumed, therefore, that both harvest and processing activities no longer occur. It is not known with complete certainty, however, whether this is the case with regards to processing.

The determination of significant economic impact can be ascertained by examining two criteria, disproportionality and profitability. The disproportionality question is: will the regulations place a substantial number of small business entities at a significant competitive disadvantage to large business entities? Since no directed fishery for sargassum currently exists, no business entities, large or small, currently participate in the fishery. The sole historical participant, however, qualified as a small business entity. Since no participants in the fishery currently exist, and the sole historical participant was a small business entity, the issue of disproportionality does not arise.

The profitability question is: Will the regulations significantly reduce profit for a substantial number of small entities? Since no directed fishery for sargassum currently exists, the regulations do not significantly reduce profit for a substantial number of small