

NMFS does not believe that the intermittent and limited harvest of sargassum off North Carolina between 1976 and 1997 affected the quantities of sargassum occurring off of more southerly coastlines. NMFS is unaware of any harvest of sargassum in the South Atlantic EEZ during the last 6 years (see also Comment 5). The abundance and density of sargassum off Florida would more likely be affected by changes in local currents and prevailing winds, such as occurred during the El Nino events of 1998 and 2002. Nevertheless, NMFS agrees that sargassum is important habitat to numerous fishes, and many fisheries operate by fishing near sargassum habitat. Regulations implemented by the promulgation of this rule will prohibit the harvest of any sargassum except from areas more than 100 nautical miles from shore off North Carolina.

Comment 4: Excessive quantities of sargassum impede navigation for the U.S. Navy, Coast Guard and merchant marine vessels, clogging cooling water intake ports. Given these issues, there does not appear to be a need to restrict or prohibit harvest. The total 22-year harvest of 448,000 lb (203 mt) is minuscule compared to the potential of the sargassum standing stock to increase its biomass by as much as 1 to 2.4 billion lb (0.4 to 1.1 million mt) within a few day's time.

Response: NMFS agrees that the biological potential for growth of sargassum makes it a highly renewable natural resource. Nevertheless, NMFS agrees with the SAFMC regarding the benefits of maintaining adequate quantities of sargassum as habitat for numerous marine species, including sea turtles, in an environment that is otherwise devoid of much structure and protective habitat. In addition, limiting harvest to areas offshore of North Carolina, during time periods when turtles and other marine life are expected to be least abundant in the sargassum, is intended to reduce the potential incidental capture and mortality of these species.

Comment 5: Allowing a harvest of 5,000 lb (2,268 kg) wet weight or 500 lb (227 kg) dry weight of sargassum per year would put the one known processing firm out of business. The firm is currently processing twice that amount in a month's time, and anticipates an expansion of its sales that would require an annual harvest of 240,000 lb (108.9 mt) wet weight annually. Additionally, very little sargassum is found off North Carolina from November through June, thus year-round harvest would provide the firm with the flexibility to select times when

sargassum was most abundant and weather conditions were conducive to taking a vessel offshore.

Response: NMFS and the SAFMC were unaware that the one known processing firm was actively engaged in processing sargassum until the firm submitted these comments. NMFS and the SAFMC were under the impression that no harvesting activity had occurred since 1997. The SAFMC's choices for optimum yield (OY) and total allowable catch (TAC) were based on average annual harvest levels from the most recent data available. To ensure that the SAFMC's proposed actions, and NMFS' decisions, were based on the best available information, NMFS contacted the firm's owner to request updated information regarding the harvest of sargassum in the SAFMC's area of jurisdiction.

The owner reported that the firm was not actively fishing for sargassum; the firm's fishing vessel had been sold. The firm was purchasing sargassum from vendors who had harvested the product from areas outside the SAFMC's area of jurisdiction. According to the firm's comment letter, its current monthly use of 10,000 lb (4.54 mt) wet weight of sargassum is approximately half its historical (1976–1997) average annual harvest. Therefore, it appears that the proposed harvesting restrictions would not affect the firm's opportunity to continue its operations. There is no information available to evaluate the firm's current mode of operation of buying raw product compared to purchasing and operating its own vessel to harvest sargassum.

Comment 6: Some of the preferred alternatives identified in the FMP, if modified to include additional considerations, would better address the conservation and management of sargassum.

Response: The Magnuson-Stevens Act, at Section 304(a)(3), provides the Secretary of Commerce (Secretary), or NMFS as the Secretary's designee, with the authority to approve, disapprove, or partially approve the preferred alternative in any FMP or FMP amendment submitted by a fishery management council. The Secretary does not have discretionary authority to select a rejected alternative, or develop a substitute alternative, for approval and implementation.

Comment 7: Several scientific studies have documented the use of sargassum by various forms of marine life, including sea turtles. NMFS is encouraged to develop better estimates of densities of sea turtle neonates in sargassum habitat. Additional questions that need to be addressed include: What

quantity of harvest is acceptable, and what is too much? What seasons are least disruptive in regards to the use of sargassum by the various life stages of finfish and invertebrate species that associate with sargassum? The decision to establish a fishing season appears to be based entirely on an assumption of post-hatchling turtle utilization of the habitat, without accounting for seasonal use of sargassum as a nursery ground by numerous fish species.

Response: NMFS acknowledges that there is a paucity of data regarding the abundance of turtles in sargassum habitat. Several studies, mostly focusing on the western edge of the Gulf Stream, have reported numbers of turtles seen during transect surveys, giving a rough estimate of densities of turtles along this western boundary. The western boundary would be the area that hatchling turtles first encounter during their migration from the nesting beach. Thus, it is likely that densities may decrease toward the eastern Gulf Stream boundary and beyond into the open ocean realm. The FMP notes (page 18) that "Regional trends in the mean abundance of and biomass of young fish show a decrease in abundance across the continental shelf and into the Gulf Stream and Sargasso Sea, and a decrease from spring through fall. Species richness is generally highest on the outer shelf during spring and summer and further offshore during the fall and winter." This same kind of distribution can be assumed for sea turtles as well. To that end, this final rule will prohibit the harvest of sargassum within 100 nautical miles of shore off North Carolina, and during the spring through fall period. The intent of this restriction is to limit the interaction with bycatch during harvesting efforts. The gear restrictions imposed by this final rule are intended to limit those impacts; harvesting nets must be constructed of 4-inch (10.2-cm) stretch mesh or larger fitted to a frame no larger than 4 ft by 6 ft (1.3 m by 2.0 m), which should allow many organisms to escape.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an FRFA, based on the Regulatory Impact Review, for this final rule. A summary of the FRFA follows:

The Magnuson-Stevens Act provides the statutory basis for this final rule. The objectives of the FMP are: establish a management structure to manage sargassum habitat; reduce the impact of the sargassum fishery on essential fish habitat; reduce the potential for conflict;