

and direct needed research to better determine distribution, production, and ecology of sargassum habitat. The final rule prohibits all harvest and possession of sargassum from the South Atlantic EEZ south of 34° N. lat., the latitude line representing the North Carolina/South Carolina border; prohibits all harvest of sargassum from the South Atlantic EEZ within 100 nautical miles of shore between 34° N. lat. and the latitude line representing the North Carolina/Virginia border; limits harvest of sargassum from the South Atlantic EEZ to the months of November through June; establishes an annual total allowable catch (TAC) of 5,000 lbs (2,268 kg) landed wet weight; requires that a NMFS-approved observer be present on each sargassum harvesting trip; and requires 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 (1.3 m by 2.0 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 on distribution, production, and ecology of sargassum exists. The rule establishes strict limits on allowable harvest of sargassum.

This final rule will require an observer on board the vessel to monitor harvest of sargassum and associated bycatch. No other projected reporting, record keeping or other compliance requirements are proposed. 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 this final rule. One small business entity was a historical participant in the fishery. This firm harvested an average annual harvest of 14,333 lb (6,501 kg) wet weight (1995–1997 average harvest), valued at \$43,000 per year, and employed three persons on a full-time basis and other workers on a part-time basis as needed. 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 (90,718 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 sole historical participant in the fishery has maintained the processing side of the business operation through the purchase of product from vendors harvesting outside the SAFMC's area of jurisdiction. There is no known harvest, therefore, within the SAFMC's area of jurisdiction that would be adversely impacted.

No significant issues were raised by public comments in response to the IRFA. Therefore, no changes were made in the final rule as a result of such comments.

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 entities. Had the sole historical participant in the fishery continued operation and been dependent upon product harvested from areas within the Council's jurisdiction, the allowable TAC would have reduced average harvest and revenues by 65 percent, from 14,333 lb (6,501 kg) wet weight (1995–1997 average harvest) to 5,000 lb (2,268 kg), valued at from \$43,000 to \$15,000. Although profit figures are not available, it is obvious that the reduction in profit would also be significant. However, as previously

stated, no directed fishery exists, so no reduction in profits will occur for any small business entities.

Since there is no directed fishery for sargassum, this final rule does not generate any negative economic impacts on small entities. Therefore, the issue of significant alternatives to mitigate economic impacts is not relevant. However, in the event that directed harvest is attempted, only the harvest restrictions will result in direct economic impacts. The harvest restrictions are not believed to be sufficient to allow sustained participation in a directed fishery for sargassum since the allowable harvest is only 5,000 lb (2,268 kg) wet weight per year. Two other alternatives, allowing no harvest and prohibiting harvest after January 1, 2001, would similarly not support sustained participation in the fishery and are, therefore, not relevant significant alternatives in that they would not mitigate the negative economic impacts of the proposed rule.

The no action alternative and an alternative establishing the TAC at 100,000 metric tons wet weight would allow unrestricted harvest. Additional alternatives would specify TAC at 20,000 lb (9,072 kg) wet weight and 200,000 lb (90,718 kg) wet weight, which would allow harvests greater than the historic average harvest per year (8,615 lb (3,908 kg) wet weight for 1976–1997 or 14,333 lb (6,501 kg) wet weight for 1995–1997). Any of these alternatives would, therefore, eliminate all negative economic impacts on a directed fishery. These alternatives, however, are inconsistent with the Council's intent to both discontinue unregulated harvest of sargassum and limit expansion of a sargassum fishery. The Council concluded that severe limitation on harvest is likely to increase the productivity of marine life in the ecosystem and, thus, increase consumptive, non-consumptive, and indirect (value to other species as habitat) use values. Furthermore, the Council concluded that maintaining these consumptive, non-consumptive, and indirect use benefits greatly outweigh the costs resulting from severely limiting harvest. In addition, there was overwhelming public support for a measure to prohibit the directed harvest of sargassum.

Copies of the FRFA are available upon request (see **ADDRESSES**).

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