

Dated: December 8, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99-32512 Filed 12-14-99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080999E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Pelagic *Sargassum* Habitat in the South Atlantic; Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agency action.

SUMMARY: NMFS has disapproved the Fishery Management Plan for Pelagic *Sargassum* Habitat of the South Atlantic Region (FMP) submitted by the South Atlantic Fishery Management Council (Council). Under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS determined that the FMP did not meet the requirements for a fishery management plan.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727-570-5305, fax: 727-570-5583, e-mail: steve.branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: Pelagic *Sargassum* is an abundant brown alga that occurs near the surface in warm waters of the western North Atlantic. According to the FMP, the standing crop of pelagic *Sargassum* in the North Atlantic Ocean may be 4 to 11 million metric tons (roughly 9 to 24 billion lb). Two different scientific studies indicate that *Sargassum* is capable of increasing its biomass by approximately 50 percent per week. The *Sargassum* habitat supports a diverse assemblage of marine organisms. The Council designated pelagic *Sargassum* as essential fish habitat (EFH) and as an essential fish habitat-habitat area of particular concern (EFH-HAPC) for snapper-groupers and coastal migratory pelagic species in its Comprehensive Amendment Addressing Essential Fish Habitat in Fishery Management Plans of the South Atlantic Region (Habitat Plan).

The Council subsequently developed and submitted the FMP that addresses conservation and management of pelagic *Sargassum* off the U.S. Atlantic

coast from the North Carolina/Virginia boundary through the east coast of Florida, including the Atlantic side of the Florida Keys. The FMP would have: (1) Established the management unit for *Sargassum*; (2) specified optimum yield (OY) for pelagic *Sargassum* as zero harvest; (3) specified overfishing levels as occurring when the fishing mortality rate is greater than zero; (4) identified EFH for *Sargassum*; (5) established EFH-HAPCs for *Sargassum*; and (6) eventually prohibited the harvest or possession of pelagic *Sargassum* in or from the exclusive economic zone off the southern Atlantic states.

The FMP did not specify a maximum sustainable yield (MSY) for pelagic *Sargassum*. Section 303(a)(3) of the Magnuson-Stevens Act requires that any fishery management plan "assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification." As such, MSY is a necessary FMP component, upon which other FMP measures such as an MSY control rule, as specified in NMFS guidelines (see 50 CFR 600.310), would depend. NMFS specifically invited comments on this aspect of the FMP and on the propriety of the control rule measures such as an OY specification of zero in the absence of any specification of MSY. Four comments indicated that the establishment of MSY was irrelevant for habitat, and three comments indirectly addressed this issue noting that research should be conducted to develop a scientifically credible management strategy.

One company has harvested a total of 448,000 lb (203,209 kg) of pelagic *Sargassum* off the southern Atlantic states from 1976 to the present. This harvest represents an average annual removal of less than 20,000 lb (9072 kg), which is 0.0002 to 0.00008 percent of the estimated standing crop. Nevertheless, the Council concluded that any removal of pelagic *Sargassum* constituted a net loss of EFH off the southern Atlantic states, and, thus, was contradictory to the goals and objectives of the Council's Habitat Plan; therefore, the Council set OY equal to zero harvest. Section 303(a)(7) of the Magnuson-Stevens Act requires the Councils to minimize, to the extent practicable, adverse effects on EFH caused by fishing.

Based on the biological information available concerning the standing crop and productivity of pelagic *Sargassum*, NMFS determined that the FMP did not provide sufficient rationale that the

historical harvest had adversely impacted *Sargassum* EFH or the fauna associated with *Sargassum* EFH.

Based on the FMP's lack of an MSY estimate for pelagic *Sargassum* and its failure to justify adequately an OY of zero, NMFS disapproved the FMP. Nevertheless, NMFS supports the Council's intent to maintain a healthy quantity of pelagic *Sargassum* habitat for numerous managed and non-managed species, including threatened, endangered, or otherwise protected species. NMFS has suggested that the Council develop an alternative management mechanism, such as an amendment to an existing FMP where *Sargassum* is designated as EFH, that would effectively manage and maintain sustainable quantities of this renewable natural resource.

Comments and Responses

Comments were received from 304 individuals, 9 sport fishing organizations, 17 environmental or citizens groups, 4 businesses, 4 state agencies, 4 Federal agencies, and the Council.

Comment 1: In response to NMFS' specific request for comments on the appropriateness of an FMP that did not contain an estimate of MSY, several commenters questioned the relevance of MSY to a recognized essential habitat, pointing out that the biomass is less important than its spatial and temporal distribution. These commenters believed that OY could be set at zero to provide the overall greatest benefit to society when considering ecosystem integrity and protection. Also, commenters noted that there was a precedent for setting OY equal to zero harvest since a similar management strategy was employed for organisms/habitat such as coral and live rock managed under other fishery management plans.

Another commenter stated that the FMP did not provide sufficient rationale to support an OY of zero harvest, and recommended that, given the lack of fishing thresholds and targets, the goals and objectives of the FMP would be better accomplished by establishing *Sargassum* as EFH under existing FMPs instead of attempting to develop all the requirements for a separate FMP. Commenters also addressed this issue indirectly, noting that data were insufficient to calculate control rule parameters and that research should be conducted to provide answers to key questions concerning the *Sargassum* ecosystem structure so that a scientifically credible management strategy could be established.

Response: NMFS recognizes the importance of *Sargassum* habitat to the offshore pelagic community. NMFS approved the Council's Habitat Plan, which designated *Sargassum* as EFH for snapper-grouper and coastal migratory species. Nevertheless, the Council, in developing an FMP, is treating *Sargassum* habitat as a fishery resource. MSY is a necessary component of an FMP; thus NMFS determined that the FMP, as submitted by the Council, was inconsistent with the Magnuson-Stevens Act because it failed to specify MSY, and disapproved it. NMFS agrees that alternative management actions, other than an FMP, could be proposed to address the resource conservation issues.

Analogies between coral/live rock EFH and *Sargassum* as EFH are inapposite for purposes of determining the appropriate level of protection. Coral and organisms that create live rock are slow growing, and, in some instances, such growth is not renewable; harvest of some of these organisms permanently damages or destroys that particular coral colony and/or reef structure. Additionally, the Council allows the harvest of octocorals, which would comprise part of the coral habitats designated as EFH. By contrast, *Sargassum* is prolific and capable of generating its own biomass in a few weeks. *Sargassum* would be more appropriately compared to other faster growing organisms that create habitat, such as oysters. Oyster reefs have been designated as EFH and as EFH-HAPC for penaeid shrimp, red drum, snapper-grouper, and coastal migratory pelagic fish management units, yet these reefs are extensively harvested. Section 303(a)(7) of the Magnuson-Stevens Act requires that all fishery management councils minimize to the extent practicable adverse effects on EFH caused by fishing, but clearly this does not, in every instance, preclude recoverable impacts to EFH due to fishing efforts.

Comment 2: A total of 311 commenters supported the implementation of the FMP, which would prohibit the harvest of *Sargassum*. These comments noted that *Sargassum* is an important habitat for numerous species of fishes and invertebrates, as well as endangered and threatened sea turtles and protected sea birds. An additional 25 comments simply expressed concern that, without management, exploitation of the resource would increase, which could lead to destruction of habitat. Several comments indicated support for the proposed FMP because its

implementation would designate *Sargassum* as EFH.

The Environmental Protection Agency provided a separate comment on the Final Environmental Impact Statement (FEIS) pursuant to sections 102(2)(C) of the National Environmental Policy Act and to section 309 of the Clean Air Act. The Council also commented on the FEIS. Both supported the proposed suspension of the *Sargassum* fishery.

Response: NMFS agrees that *Sargassum* is an important EFH. On June 3, 1999, NMFS approved the Council's Habitat Plan, which designated *Sargassum* as EFH for several fish species. NMFS intends to ensure that healthy quantities of pelagic *Sargassum* habitat are maintained for numerous managed and non-managed species, including threatened, endangered, or otherwise protected species.

NMFS disagrees that a total prohibition of harvest is necessary to protect, conserve, and enhance the abundance of this prolific renewable natural resource or to protect the fauna comprising the *Sargassum* habitat community. According to the FMP, the standing crop of pelagic *Sargassum* in the North Atlantic Ocean may be 9 to 24 billion lb (4 to 11 million metric tons), and two different scientific studies indicate that *Sargassum* is capable of increasing its biomass between 10 and 100 percent per week. The average annual harvest of *Sargassum* is approximately 20,000 lb (9072 kg). This harvest represents only 0.0002 to 0.00008 percent of the estimated standing crop. Based on the biological information available concerning the standing crop and productivity of pelagic *Sargassum*, NMFS determined that the FMP did not adequately justify zero harvest as necessary to effectively conserve and maintain this important renewable natural resource (see also the Response to Comment 1).

NMFS has suggested to the Council several less restrictive management options that would allow the continued, but restricted, harvest of *Sargassum*, while ensuring minimal impacts to the habitat and the fauna associated with the *Sargassum* habitat, including the use of an on-board observer.

Comment 3: Three commenters opposed the prohibition of *Sargassum* harvest. One commenter pointed out that oyster reefs provide EFH for a multitude of marine species, but that the oysters comprising these reefs are harvested intensively. All three comments noted that the current harvest level is minimal compared with the existing standing crop of *Sargassum*.

Response: NMFS agrees that the designation of a particular habitat as EFH does not preclude the continued use of that habitat. NMFS disagrees with the Council's position that any removal of pelagic *Sargassum* represents a net loss of EFH and thus is contradictory to the goals and objectives of the Council's Comprehensive Habitat Plan for the South Atlantic Region or to the Magnuson-Stevens Act. That position is inconsistent with other designations of EFH and EFH-HAPC in the Council's Habitat Plan. The Council allows the harvest of octocorals, which are part of the overall coral complex designated as EFH. Oyster reefs and shell hash areas are designated as EFH and as EFH-HAPC for penaeid shrimp, red drum, snapper-grouper, and coastal migratory pelagic fish management units, and these reefs are extensively harvested. Section 303(a)(7) of the Magnuson-Stevens Act requires that the Councils minimize to the extent practicable adverse effects on EFH caused by fishing, but clearly this does not, in every instance, preclude recoverable impacts to EFH due to fishing efforts.

Comment 4: One environmental group stated that NMFS had caused unacceptable delays in promulgating regulations related to this FMP; NMFS did not publish the Notice of Availability (NOA) of the FMP "immediately" within 5 days of receipt of the FMP, nor did NMFS publish a proposed rule to promulgate the actions outlined in the FMP for public comment.

Response: An FMP or amendment is not deemed to be transmitted from the Council to the Secretary until it is complete, including any necessary regulations and supporting analyses. Additionally, NMFS may not publish the proposed regulations for public comment if the proposed regulations are determined, subsequent to transmittal, to be inconsistent with the FMP or amendment, the Magnuson-Stevens Act, or other applicable law.

Comment 5: One environmental organization stated that the wording in the NOA and in the letter to the Council returning the proposed regulations indicated that NMFS intended to disapprove the FMP prior to receiving and fairly considering public comment.

Response: Section 303(a)(3) mandates that an FMP must assess and specify the present and probable future condition of the fishery and the MSY and OY from the fishery. As such, MSY is a necessary component of an FMP. Therefore, in the NOA, NMFS specifically requested public comment on the FMP's lack of an MSY and the propriety of control rule measures such as an OY specification of

zero in the absence of any specification of MSY. NMFS disagrees that by requesting such comment, it prejudiced the results of the NOA.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 1999.

Penelope D. Dalton,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Philippines

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 345, which is currently closed, is being increased for special carryforward, which will re-open the limit.

To the extent this special carryforward is used, it will be charged against the 2000 specific limit at a ratio of 1.5 to 1.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also

see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

*Chairman, Committee for the Implementation
of Textile Agreements.*

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
*Department of the Treasury, Washington, DC
20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 15, 1999, you are directed to increase the limit for Category 345 to 244,200 dozen¹, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation
of Textile Agreements.*

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BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port,

¹ The limit has not been adjusted to account for any imports exported after December 31, 1998.

call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

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Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

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To the extent this special carryforward is used, it will be charged against the 2000 specific limits at a ratio of 1.5 to 1.

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Effective on December 15, 1999, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
Levels in Group I	
638/639	2,519,377 dozen.
647/648	1,494,547 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).