

has proposed, in their application, a system of area closures triggered by dates, water temperatures and/or observed sea turtle interactions, to minimize the impact of the experimental fishery on threatened or endangered sea turtles. This proposal served as the basis for developing an interim final rule to protect sea turtles. This interim final rule (67 FR 13098; March 21, 2002), which is effective for 240 days starting from March 15, 2002, requires monkfish gillnet vessels to move their fishing operations steadily northward at specific points in time, based in part on sea surface temperature information. Participating vessels would be required to comply with the provisions of this interim final rule. In addition, the experimental fishery would terminate immediately if three loggerhead turtles are taken or one endangered sea turtle is taken. NMFS will take the necessary steps to ensure consistency with its obligations under the Endangered Species Act before issuing the EFPs.

EFPs would be issued to three vessels to exempt them from monkfish limited access permit eligibility requirements; DAS and reporting requirements; gear-marking requirements; incidental monkfish possession and landing limits; the minimum fish size requirement (for data collection only); and minimum gillnet mesh size, as required by the FMP (50 CFR part 648, subpart F).

Based on the results of this EFP, this action may lead to future rulemaking.

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

Dated: April 12, 2002.

**John H. Dunnigan,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[I.D. 040202C]

#### Magnuson-Stevens Act Provisions, Subpart H; General Provisions for Domestic Fishing

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

**ACTION:** Notice of receipt of petition for rulemaking and request for comments.

**SUMMARY:** NOAA announces receipt of a petition for rulemaking under the Administrative Procedure Act. Oceana, a non-governmental organization concerned with the environmental health of the oceans, has petitioned the U.S. Department of Commerce to promulgate immediately a rule to establish a program to count, cap, and control bycatch in U.S. fisheries. The Oceana petition asserts that NMFS is not complying with its statutory obligations to monitor and minimize bycatch under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Migratory Bird Treaty Act (MBTA). The petition seeks a regulatory program that includes a workplan for observer coverage sufficient to provide statistically reliable bycatch estimates in all fisheries, the incorporation of bycatch estimates into restrictions on fishing, the placing of limits on directed catch and bycatch in each fishery with provision for closure upon attainment of either limit, and bycatch assessment and reduction plans as a requirement for all commercial and recreational fisheries.

**DATES:** Comments will be accepted through June 17, 2002.

**ADDRESSES:** Copies of the petition are available, and written comments on the need for such a regulation, its objectives, alternative approaches, and any other comments may be addressed to William T. Hogarth, Ph.D., Assistant Administrator for Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; telephone 301-713-2239. Comments may also be sent via fax to 301-713-1193, attn: Val Chambers. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Val Chambers, telephone 301-713-2341, fax 301-713-1193, e-mail Val.Chambers@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The petition filed by Oceana states that wasteful large-scale bycatch of birds, mammals, turtles, and fish is occurring in the United States and worldwide. The petition cites scientific estimates of bycatch poundage and indicates bycatch of a much larger magnitude. The petition asserts that NMFS is allowing this wastage to continue by not meeting its legal obligations for bycatch under the MSA, ESA, MMPA, and the MBTA.

The petition cites specific legal responsibilities of NMFS for bycatch under each of these statutes and concludes that NMFS must count, cap, and control bycatch under the MSA, ESA, and MMPA and that NMFS must

monitor and report bycatch of seabirds that occurs in fishing operations and take steps to reduce seabird bycatch. For the MSA and related regulations and Federal Court interpretations, the petition cites national standard 9 and other requirements for minimizing bycatch and related mortality, including a standardized reporting methodology for bycatch. The petition concludes that any FMP or regulation prepared to implement an FMP must contain measures to minimize bycatch in fisheries to the extent practicable and argues that greater observer coverage is required. For the ESA, the petition cites the prohibition on taking endangered species and protection of threatened species, including recovery plans to guide regulatory efforts, as well as consultation requirements and incidental take statements. For the MMPA, the petition cites requirements for a regulatory system to avoid and minimize takes of marine mammals reducing mortality or serious injury to insignificant levels, as well as take reduction plans and monitoring of marine mammal takes. For the MBTA, the petition cites the prohibition on taking any migratory bird, including seabirds, except as permitted by regulations issued by the Department of the Interior, and cites Federal case law and Executive Order 13186 as requirements that NMFS ensure that fishery management plans approved by NMFS comply with the MBTA. The petition also refers to the NMFS-issued National Plan of Action for reducing seabird bycatch and the need to prepare a national seabird bycatch assessment.

The exact and complete assertions of nonconformance with Federal law are contained in the text of Oceana's petition which is available via internet at the following NMFS web address: <http://www.nmfs/noaa.gov/sfa/sfweb/index.htm>. Also, anyone may obtain a copy of the petition by contacting NMFS at the above address.

The petition specifically requests that NMFS immediately undertake a rulemaking to meet its obligations under the above statutory authorities and that such rulemaking include the following four actions:

"1. Develop and implement a workplan for placing observers on enough fishing trips to provide statistically reliable bycatch estimates in all fisheries. This task involves several steps (taking into account the diversity of vessel category, gears used, and fishing region): (a) determining how many fishing trips must be observed, where observers should be stationed, and other details; (b) identifying funding sources to support such

observer coverage, including taxpayer subsidies, taxing landings or user fees; and (c) hiring, training, and deploying the necessary observers.

“2. Incorporate reasonable estimates of bycatch into all total allowable catch levels and other restrictions on fishing.

“3. Set absolute limits on the amount of directed catch and bycatch (including non-fish bycatch) that can occur in each fishery, and close the fishery when the applicable catch or bycatch limit (whichever is reached first) is met.

“4. Within 12 months of initiating rulemaking, develop, approve, and implement bycatch assessment and reduction plans for commercial and recreational fisheries. Such plans should include, at minimum, (a) an assessment of the fishery according to its bycatch, including its types, levels, and rates of bycatch on a per-gear basis and the impact of that bycatch on bycaught species and the surrounding environment; (b) a description of the level and type of observer coverage necessary accurately to characterize total mortality (including bycatch) in the fishery; (c) bycatch reduction targets and the amount of directed and bycatch mortality allowed in each fishery to meet the target; and (d) types of bycatch reduction measures (such as closed areas, gear modifications, or effort reduction) that will be employed in the fishery, including incentives for those who use gears that produce less bycatch. Beginning 12 months after rulemaking commences, NMFS should not permit fishing in any fishery that lacks a functioning bycatch plan.”

The Assistant Administrator for Fisheries has determined that the petition contains enough information to enable NMFS to consider the substance of the petition. NMFS will consider public comments received in determining whether or not to proceed with the development of the regulations requested by Oceana. To this end, NMFS, by separate letter, has requested each of the Regional Fishery Management Councils to assist in evaluating this petition. Upon determining whether or not to initiate the requested rulemaking, the Assistant Administrator for Fisheries, NOAA, will publish a notice of the agency's final disposition of the Oceana petition request in the **Federal Register**.

Dated: April 11, 2002.

**John H. Dunnigan,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 654

[I.D. 031402C]

RIN 0648-AN10

#### Stone Crab Fishery of the Gulf of Mexico; Amendment 7

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

**ACTION:** Notice of availability of Amendment 7 to the Fishery Management Plan for the Stone Crab Fishery for the Gulf of Mexico; request for comments.

**SUMMARY:** NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 7 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 7 would establish a Federal trap limitation program for the commercial stone crab fishery in the exclusive economic zone (EEZ) off Florida's west coast, including the area off Monroe County, FL (i.e., the management area) that would complement the stone crab trap limitation program implemented by the Florida Fish and Wildlife Conservation Commission (FFWCC). In addition, Amendment 7 would revise the Protocol and Procedure for an Enhanced Cooperative Management System (Protocol) consistent with Florida's constitutional revisions that transferred authority for implementation of fishery-related rules from the Governor and Cabinet to the FFWCC. The intended effects are to establish a Federal program that would complement and enhance the effectiveness of the FFWCC's trap limitation program and, thereby, help to reduce overcapitalization in the stone crab fishery.

**DATES:** Written comments must be received on or before June 17, 2002.

**ADDRESSES:** Written comments must be sent to Mark Godcharles, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of Amendment 7, which includes a regulatory impact review and an environmental

assessment should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida 33619-2266; phone: 813-228-2815; fax: 813-225-7015; e-mail: gulfcouncil@gulfcouncil.org.

**FOR FURTHER INFORMATION CONTACT:**

Mark Godcharles 727-570-5305, fax 727-570-5583, e-mail Mark.Godcharles@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Fishery information available since the early 1980's indicates that the stone crab fishery, in terms of area fished, and numbers of participants and traps, has expanded to a level where the fishery has more participants and traps than necessary to harvest optimum yield. This excessive growth has reduced efficiency in the fishery and failed to increase annual harvest since the early 1990's. Since moratoriums were first implemented (60 FR 13918, March 15, 1995; 63 FR 44595, August 20, 1998), neither Florida nor NMFS has issued new permits for this fishery. On June 26, 2000, Florida adopted its trap certificate program which is designed to reduce the number of traps in the stone crab fishery to an optimal level over about a 30-year period. The FFWCC expects to implement this program by October 1, 2002.

Amendment 7 represents a continuation of cooperative State/Federal efforts to constrain overcapitalization in the stone crab fishery. The state/federal cooperative approach to managing the Florida stone crab fishery was initiated with the development and implementation of the FMP (final rule: 44 FR 53519, September 14, 1979). The fourth management objective in the FMP specified that regulations be developed with the ideal of promoting uniform and consistent management of the fishery in state and federal of the Gulf of Mexico waters off west Florida. In Amendment 7, the Council has proposed the following nine FMP changes to align Federal management of the stone crab fishery with the FFWCC trap reduction program: (1) Recognize, but not require,