

U.S. EPA, the City of Bloomington, Monroe County, and the Indiana State Board of Health, (hereinafter collectively referred to as the "Parties") a Consent Decree was signed in 1985 and subsequently entered by the court on August 22, 1985, for the cleanup of Neal's Dump. The Consent Decree called for the construction of a permitted, Toxic Substances Control Act municipal (TSCA) approved, solid waste fired incinerator to be used to destroy PCB contaminated material excavated from Neal's Dump.

In 1994, the parties agreed to jointly explore, alternatives to the incineration remedy required by the Consent Decree. In November 1997, Federal Judge Hugh Dillin issued a judicial order stating that the six Consent Decree sites must be remediated by December 1999 and assigned Magistrate Judge Kennard Foster to oversee the progress of the parties toward meeting the December 1999 deadline. On February 1, 1999, Judge Dillin issued an order directing that the Consent Decree parties have until December 31, 1999 to complete the source control remedies for the Consent Decree sites.

After discussions with governmental parties, and under court supervision, the U.S. EPA issued a Proposed Plan for the Neal's Dump site on August 23, 1998. After addressing public comments, on October 16, 1998 the U.S. EPA signed a Record of Decision (ROD) Amendment for the Neal's Dump site. The ROD Amendment modified the August 3, 1984, Enforcement Decision Document (EDD). The ROD Amendment called for the following:

- Excavation of the site soils to residential/high occupancy PCB cleanup standards with disposal of the soils in a off-site, permitted Toxic Substances Control Act/chemical waste landfill.
- Off-site incineration in a permitted, TSCA approved, incinerator of all capacitors containing PCB oil.
- Placement of a minimum of a 10-inch soil cover over the excavated areas and implementation of drainage controls, including providing a vegetative cover.
- Implementation of deed restrictions for the site.
- Monitoring groundwater surrounding the site for a minimum of five years.

Remedial Construction Activities

CBS began excavating PCB contaminated soil/material on September 29, 1998, after approval by the governmental parties of the RD/RA Work Plan. A total of 7,250 tons of PCB contaminated material was disposed of

at Wayne Disposal in Belleville, Michigan. In addition, 2,430 capacitors, which weighed approximately 250,000 pounds and filled with PCB oil were incinerated at ChemWaste in Port Arthur, Texas. The U.S. EPA, the State of Indiana, and Monroe County performed oversight of the CBS activities at the Neal's Dump site.

As described in the ROD Amendment, CBS was required to meet a 10 ppm PCB average concentration in the soils. Excavated areas were then covered with a 10-inch soil cover. CBS completed a magnetometry study along with soil borings for PCB analysis around the dump to verify the site boundaries. Verification sampling by CBS after the excavation was completed showed that residual PCBs was well under the cleanup standard, at 0.8 ppm on average. The U.S. EPA split 20 verification samples for PCBs with CBS and the results were similar to CBS's sampling. In addition, the U.S. EPA analyzed for volatiles, semi-volatiles and metals in 7 samples and the results showed no additional risk. To assure that fill and final soil cover was free of contamination, CBS completed sampling of the two borrow areas for PCBs and pesticides.

CBS completed construction of the site on November 17, 1998, excluding final placement of topsoil, and the U.S. EPA completed the pre-final inspection on November 20, 1998. CBS Corporation completed the final site grading and seeding and the final inspection was completed on June 8, 1999. CBS has also filed deed restrictions with Owen County.

CBS has developed a groundwater monitoring plan to conduct groundwater monitoring until the Five-Year Review is completed. Groundwater monitoring in the proposed monitoring wells have shown low levels of PCBs, but under the maximum contaminant level (MCL) for PCBs. By completely removing the source material, the U.S. EPA expects no additional action for groundwater. At the Five-Year review, the U.S. EPA will make a determination if the groundwater monitoring will continue.

Community Relations Activities

The Consent Decree sites in and near Bloomington, Indiana, have been the object of considerable public interest. The Region's community relations staff conducted an active campaign to ensure that the residents were well-informed about the activities at the Neal's Dump site. Activities included meeting every 4 to 6 weeks with the Citizens Information Committee to discuss the Consent Decree sites, including Neal's Dump.

These meetings are broadcast over the local cable television station.

Conclusion

No hazardous substances remain at the site above health based levels. Historical groundwater monitoring has shown PCBs to be present and CBS Corporation is required to monitor groundwater semi-annually until the Five-Year review. At the Five-Year review, the U.S. EPA will determine if groundwater monitoring will continue.

U.S. EPA, with concurrence from the State of Indiana has determined that all appropriate Fund-financed responses under CERCLA at the Neal's Dump Superfund Site have been completed, and no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, U.S. EPA proposes to delete the Site from the NPL.

Dated: August 17, 1999.

Francis X. Lyons,

Regional Administrator, Region V.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 080999E]

RIN 0648-AM15

Fisheries of the 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 availability of a fishery management plan for the pelagic *Sargassum* habitat of the South Atlantic Region; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted a Fishery Management Plan for the Pelagic *Sargassum* Habitat Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. The FMP would establish the management unit for *Sargassum*; specify optimum yield (OY) for pelagic *Sargassum* as zero harvest; specify overfishing levels as occurring when the fishing mortality rate is greater than zero; identify essential fish habitat (EFH) for *Sargassum*; establish habitat areas of

particular concern (HAPC) for Sargassum; and phase out the harvest or possession of pelagic *Sargassum* in or from the exclusive economic zone off the southern Atlantic states starting January 1, 2001, or when 50,000 lb (22,680 kg) wet weight is harvested, whichever occurs first.

DATES: Written comments must be received on or before October 25, 1999.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the FMP, which includes a Final Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement, should be sent to the South Atlantic Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699. Phone: 843-571-4366; fax: 843-769-4520; e-mail: safmc@noaa.gov. Additional information may be obtained from the Council's website at <http://www.safmc.nmfs.gov>.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 727-570-5305.

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

The FMP addresses conservation and management of pelagic *Sargassum* off the U.S. Atlantic coast from the North Carolina/Virginia border through the east coast of Florida, including the Atlantic side of the Florida Keys.

Need for Management

Pelagic *Sargassum* is an abundant brown algae that occurs near the surface in warm waters of the western North Atlantic that supports a diverse assemblage of marine organisms, including over 100 species of fish, fungi, micro- and macro-epiphytes, at least 145 species of invertebrates, five species of sea turtles, and numerous marine birds. The Council has designated pelagic *Sargassum* as EFH and as an HAPC for snapper-grouper species and coastal migratory pelagic species.

The FMP indicates that 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). One company has harvested a total of 448,000 lb (203,213 kg) of pelagic *Sargassum* off the southern Atlantic states from 1976 to the present. 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. Even though there is no indication that the harvest, to date, has had an adverse impact on *Sargassum* EFH, the Council concluded that any removal of pelagic *Sargassum* constitutes a net loss of EFH off the southern Atlantic states, and thus is contradictory to the goals and objectives of the Council's Comprehensive Habitat Plan for the South Atlantic Region.

Data are insufficient to calculate a maximum sustainable yield (MSY) for pelagic *Sargassum*, and the Council chose not to specify an MSY in the FMP. Nevertheless, section 303(a)(3) of the Magnuson-Stevens Act requires that a 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." MSY is a necessary fundamental FMP component, upon which such other FMP measures as an MSY control rule, as specified in NMFS guidelines (see 50 CFR 600.310), would depend.

With the inability to estimate MSY for pelagic *Sargassum* with any certainty and to meet other provisions of the Magnuson-Stevens Act concerning the requirements of an FMP, the Council may wish to pursue alternative management actions that would achieve its goals to conserve and maintain sustainable pelagic *Sargassum* habitat. Therefore, NMFS invites comments specifically on this aspect of the FMP and the propriety of control rule measures such as an OY specification of zero in the absence of any specification of MSY.

Endangered and Threatened Species Issues

In compliance with requirements of the Endangered Species Act, NMFS evaluated the impact of harvesting *Sargassum* on endangered or threatened species. That consultation concluded that continued harvest of pelagic *Sargassum* until January 1, 2001, or until the 50,000 lb (22,680 kg) wet weight cap is reached, is not likely to jeopardize the continued existence of any listed species under NMFS purview, although the loggerhead, green, leatherback, Kemp's ridley, and hawksbill sea turtles are likely to be adversely affected by the action. As part of the consultation, NMFS developed an incidental take statement that included reasonable and prudent measures necessary to minimize the impacts of the takings.

NMFS will consider comments received by October 25, 1999 in its decision to approve, disapprove, or partially approve the FMP. NMFS will not consider comments received after that date in this decision; NMFS will address all comments received on the FMP in the preamble of the final rule.

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

Dated: August 20, 1999.

Gary C. Matlock,

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

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