

we did have information on contaminants occurring in individual eels, this is not substantive information on the effects of contaminants on the overall American eel population.

Although the petitioner asserted effects to the American eel from electro-magnetic fields, acoustic disturbance, and the harvest of seaweed for biofuel, the petitioner did not provide any data and we have no information in our files to support the claims. Therefore, we find the assertions to be speculative and not a sufficient basis to conclude that any of these may pose a significant threat to the American eel.

Summary of Factor E

We find that the information provided in the petition, as well as other new information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted by a causal link between oceanic changes (increasing sea surface temperature with a corresponding shift in spawning location, decrease in food availability, or shift in leptocephali transport by currents, tied to global warming) and decreasing glass eel recruitment. We will further explore any current or future population level impacts that may result from climate change in our new 12-month status review. However, we find that the information provided in the petition, as well as baseline and other new information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to hydropower impacts, contaminants, electro-magnetic fields, acoustic disturbance, or the harvest of seaweed for biofuel. Information in our files and in the petition does not present new information to change the Service's previous conclusion in the 2007 12-month finding that hydropower and contaminants are not significant threats to the American eel population. We will, however, investigate any new information regarding Factor E threats that arises during the course of our new 12-month status review.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the American eel throughout its entire range may be warranted. This finding is based on information provided under factor E (changes in oceanic conditions due to climate change). We determine that the information provided under factors A (habitat loss, degradation or curtailment

of habitat or range), B (overutilization for scientific, commercial, or educational purposes), C (disease or predation), D (inadequacy of existing regulatory mechanisms), and E (hydropower turbines, contaminants, electro-magnetic fields, acoustic disturbance, or seaweed harvesting) is not substantial.

Because we have found that the petition presents substantial information indicating that listing the American eel may be warranted, we are initiating a status review to determine whether listing the American eel under the Act is warranted.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a "substantial" 90-day finding. Because the status review may provide additional information, and because the Act's standards for 90-day and 12-month findings are different, as described above, a "substantial" 90-day finding does not mean that the status review will result in a "warranted" finding.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Northeast Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Northeast Regional Office.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 21, 2011.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BB33

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 18

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 18 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP) for review, approval, and implementation by NMFS. The amendment proposes actions to remove species from the FMP; modify the framework procedures; establish two migratory groups for cobia; and establish annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs) for king mackerel, Spanish mackerel, and cobia. In addition, Amendment 18 proposes to set allocations and establish control rules for Atlantic group cobia and revise definitions for management thresholds for Atlantic migratory groups.

DATES: Written comments must be received on or before November 28, 2011.

ADDRESSES: You may submit comments on the amendment identified by "NOAA-NMFS-2011-0223" by any of the following methods:

- **Electronic submissions:** Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
 - **Mail:** Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change.

All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA-NMFS-2011-0223" in the keyword search and click on "search." To view posted comments during the comment period, enter "NOAA-NMFS-2011-0223" in the keyword search and click on "search." NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of the amendment may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727-824-5305, or e-mail: susan.gerhart@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 a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The FMP being revised by this amendment was prepared by the Councils and implemented through regulations at 50 CFR parts 622 under the authority of the Magnuson-Stevens Act.

Background

The 2006 revisions to the Magnuson-Stevens Act require that by 2011, for fisheries determined by the Secretary to not be subject to overfishing, ACLs and AMs must be established at a level that prevents overfishing and helps to achieve optimum yield (OY). These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. Guidance also requires fishery management councils to establish a control rule to determine allowable biological catch (ABC).

Currently two migratory groups of king mackerel and Spanish mackerel are established; the Gulf migratory group and the Atlantic migratory group. The Gulf Council determines management measures for the Gulf migratory groups and the South Atlantic Council determines management measures for the Atlantic migratory groups.

Management Measures Contained in Amendment 18

Actions in Amendment 18 would remove four species from the FMP; modify the framework procedures; establish two migratory groups for cobia; and establish ACLs, ACTs, and AMs for each migratory group of king mackerel, Spanish mackerel, and cobia. In addition, Amendment 18 would set allocations and establish control rules for Atlantic group cobia and revise definitions for management thresholds for Atlantic migratory groups.

Removal of Species From the FMP

Species currently in the FMP include king mackerel, Spanish mackerel, cobia, cero, little tunny, dolphin, and bluefish (Gulf only). At present, only king mackerel, Spanish mackerel, and cobia have associated Federal regulatory text; the other species are in the FMP for data collection purposes only. Even though dolphin are in the Coastal Migratory Pelagic FMP, in the Atlantic they are managed under a different FMP. Amendment 18 proposes to remove cero, little tunny, dolphin, and bluefish from the Coastal Migratory Pelagic FMP. The Councils and NMFS have determined these species are not in need of Federal management at this time. If landings or effort change for any of these species and the Councils determine management at the Federal level is needed, these species could be added back into the FMP at a later date.

Cobia Migratory Groups

Although there is mixing of cobia from the Gulf and the Atlantic, scientific data indicate there are at least two separate migratory groups in the Gulf and Atlantic. Amendment 18 would establish two migratory groups for cobia with the boundary at the line of demarcation between the Gulf exclusive economic zone (EEZ) and the South Atlantic EEZ. ACLs and AMs would be established separately for each group by the responsible Council.

ABCs, ACLs, and AMs

The Councils accepted ABC control rules for Gulf migratory groups of king mackerel, Spanish mackerel, and cobia, and for the Atlantic migratory group of cobia, based on the control rule

recommended by the Gulf Council's Scientific and Statistical Committee (SSC). They accepted ABC control rules for Atlantic migratory groups of king mackerel and Spanish mackerel based on the control rule recommended by the South Atlantic Council's SSC. For all species, Amendment 18 proposes ACLs equal to the ABC. For purposes of tracking the ACL for king and Spanish mackerel, landings will be evaluated based on the commercial fishing year. Recreational landings for all Atlantic species will be evaluated based on a moving multi-year average of landings, as described in the FMP.

Gulf Migratory Group King Mackerel

For Gulf migratory group king mackerel, Amendment 18 proposes separate ACLs and AMs for the commercial and recreational sectors based on sector allocations. The commercial sector would close by zone, subzone, or gear type when the commercial quota for the applicable zone, subzone, or gear type is reached or is projected to be reached. In addition, current trip limit adjustments would remain in place. For the recreational sector, the NMFS Regional Administrator would have the authority to reduce the bag and possession limit to zero if the recreational allocation (recreational ACL) is reached or projected to be reached.

Atlantic Migratory Group King Mackerel

For Atlantic migratory group king mackerel, Amendment 18 proposes separate ACLs for the commercial and recreational sectors based on sector allocations. Amendment 18 also proposes a stock ACL and an ACT for the recreational sector. The commercial sector would close when the commercial ACL is reached or projected to be reached. For the recreational sector, if the stock ACL is exceeded in any year, the bag limit would be reduced the next fishing year by the amount necessary to ensure that recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. A sector specific payback would be assessed if Atlantic migratory group king mackerel are determined to be overfished and the stock ACL is exceeded.

Gulf Migratory Group Spanish Mackerel

For Gulf migratory group Spanish mackerel, Amendment 18 proposes stock ACLs and AMs. Both the commercial and recreational sectors would close when the stock ACL is reached or projected to be reached.

Atlantic Migratory Group Spanish Mackerel

For Atlantic migratory group Spanish mackerel, Amendment 18 proposes separate ACLs for the commercial and recreational sectors based on sector allocations. Amendment 18 also proposes an ACT for the recreational sector. The commercial sector would close when the commercial quota is reached or projected to be reached. In addition, current trip limit adjustments would remain in place. For the recreational sector, if the stock ACL is exceeded in any year, the bag limit would be reduced the next fishing year by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. A sector specific payback would be assessed if the Atlantic migratory group Spanish mackerel are determined to be overfished and the stock ACL is exceeded.

Gulf Migratory Group Cobia

For Gulf migratory group cobia, Amendment 18 proposes stock ACLs and AMs. A stock ACT is proposed that is 90 percent of the ACL. Both the commercial and recreational sectors would close when the stock ACT is reached or projected to be reached.

Atlantic Migratory Group Cobia

For Atlantic migratory group cobia, Amendment 18 proposes separate ACLs for the commercial and recreational sectors based on sector allocations. Because sector allocations do not currently exist for cobia, the amendment

proposes an allocation of 8 percent of the ACL for the commercial sector and 92 percent of the ACL for the recreational sector, based on landings. Amendment 18 also proposes an ACT for the recreational sector.

The commercial sector would close when the commercial ACL is reached or projected to be reached. For the recreational sector, if the stock ACL is exceeded in any year, the fishing season would be reduced the following year by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. A sector specific payback would be assessed if Atlantic migratory group cobia are determined to be overfished and the stock ACL is exceeded.

Modify the Current Definitions for Management Thresholds for South Atlantic Migratory Groups

Amendment 18 would revise definitions of maximum sustainable yield, OY, minimum stock size threshold and maximum fishing mortality threshold for Atlantic migratory group king mackerel, Spanish mackerel, and cobia.

Modification of Generic Framework Procedures

To facilitate timely adjustments to harvest parameters and other management measures, the Councils have added the ability to adjust ACLs and AMs, and establish and adjust target catch levels, including ACTs, to the current framework procedures. The

proposed addition of other management options into the framework procedures would also add flexibility and the ability to more timely respond to certain future Council decisions through the framework procedures.

Consideration of Public Comments

A proposed rule that would implement measures outlined in Amendment 18 has been received from the Councils. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by November 28, 2011, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: September 23, 2011.

Emily H. Menashes,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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