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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 200313-0080]

RIN 0648-BI82

Clarification of Magnuson-Stevens Fishery Conservation and Management Act Regulation Regarding Monitor National Marine Sanctuary; Final Rulemaking

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

ACTION: Final rule.

SUMMARY: This final rule will clarify a regulation adopted under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), which cross-references and incorrectly interprets regulations adopted under the National Marine Sanctuaries Act. The Monitor National Marine Sanctuary (Sanctuary) regulations currently prohibit some, but not all, fishing in the Sanctuary. NMFS is clarifying its regulation which incorrectly interprets Sanctuary regulations to prohibit all fishing in the Sanctuary by removing the fishing prohibition text and cross-referencing regulations for national marine sanctuaries.

DATES: The final rule is effective [*insert date of publication in the FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Chris Wright, Fishery Policy Analyst, 301-427-8504, or via e-mail *chris.wright@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Sanctuary was designated as the nation's first national marine sanctuary in 1975 and protects the wreck of the famed Civil War ironclad U.S.S. Monitor. This proposed rule would amend a general fishery regulation adopted under the MSA, which currently provides: "[a]ll fishing activity, regardless of species sought, is prohibited under 15 CFR part 924 in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina" (50 CFR 600.705(f)). This text incorrectly states that "all fishing activity" is prohibited under national marine sanctuary regulations. The Sanctuary regulations, which are currently codified at part 922, only expressly prohibit one type of fishing activity, "trawling" (50 CFR 922.61(h)). The Sanctuary regulations further prohibit all "dredging" and "[a]nchoring in any manner, stopping, remaining, or drifting without power" (Id. § 922.61(a)). While these regulations limit some

fishing activity, it is incorrect to state that all fishing is prohibited in the Sanctuary by national marine sanctuary regulations, as the current NMFS regulation provides.

On December 16, 2019, NMFS issued a proposed rule (84 FR 68389) to clarify the regulatory text at 50 CFR 600.705(f) by removing the incorrect text and retaining a cross-reference to the Office of National Marine Sanctuaries' regulations at 15 CFR part 922, which regulate activities in the national marine sanctuaries. The regulation we are amending is in the General Provisions for Domestic Fisheries (50 CFR part 600, subpart H). Regulations in part 600 implement and carry out all domestic fishery management plans (FMPs) adopted under the MSA. This action is authorized under MSA § 305(d), which gives the Agency general authority to carry out FMPs adopted under the MSA.

Comments and Responses

NMFS received four comments during the comment period. All written comments can be found at <http://www.regulations.gov/> by searching for RIN 0648-BI82. The comments received during the comment period are summarized below.

Comment 1: The South Atlantic Fishery Management Council supports the proposed rule because it alleviates confusion regarding fishing regulations in the Sanctuary by

removing the text that prohibits "all fishing activity."
The Council stated the remaining specific regulations that prohibit anchoring, trawling, drifting, diving, and lowering devices below the surface strike a reasonable balance between protecting the historic site and allowing limited fishing activity that will not impact the site.

NMFS agrees with this comment because it reiterates the Agency's rationale for this action.

Comment 2: The North Carolina Division of Marine Fisheries supports the proposed rule because it removes the prohibition on all fishing activity in the regulatory text and references the appropriate regulations. They agree with NMFS that this action will remove unnecessary regulations, the net economic impact will be positive, and the modifications will potentially alleviate confusion among stake holders.

NMFS agrees with this comment because it reiterates the Agency's rationale for this action.

Comment 3: Two commenters, from the general public, did not support the proposed rule and asked NMFS to prohibit all fishing in the Sanctuary.

NMFS disagrees with these comments. Nothing in the National Marine Sanctuaries Act requires NOAA to prohibit all fishing in national marine sanctuaries. NOAA's Office

of National Marine Sanctuaries believes that national marine sanctuaries should take into account various stakeholders and activities as long as they do not conflict with the primary goal of resource protection. The current Sanctuary regulations strike a balance of protecting the U.S.S. Monitor while allowing for some fishing to occur.

Classification

This final rule is promulgated pursuant to MSA § 305(d). The NMFS Assistant Administrator has determined that this rule is consistent with the MSA and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule is considered an Executive Order 13771 deregulatory action. NMFS expects this final rule to alleviate the potential for confusion regarding the fishing allowed in the Sanctuary, by making clear that NMFS does not interpret Sanctuary regulations to prohibit all fishing in the Sanctuary. This final rule also makes clear that regulations governing fishing in national marine sanctuaries are set forth at 15 CFR part 222 and that these regulations may apply in addition to regulations adopted under the MSA.

No duplicative, overlapping, or conflicting Federal rules have been identified beyond those discussed herein. In addition, no new reporting, recordkeeping, or other compliance requirements are introduced by this final rule. Accordingly, the Paperwork Reduction Act does not apply to this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. None of the public comments that were received specifically addressed the certification and NMFS has not received any new information that would affect its determination that this rule would not have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. NMFS' regulation at 50 CFR 600.705(f) currently interprets national marine sanctuary regulations incorrectly. This has the potential

to create confusion regarding the fishing restrictions applicable to the Sanctuary and should be corrected as expeditiously as possible. The impact if this action is not implemented immediately is the continued potential for confusion from the public and the recreational and commercial fishing sectors in regard to the Sanctuary's fishing regulations.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 13, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 600 will be amended as follows:

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.705, revise paragraph (f) to read as follows:

§ 600.705 Relation to other laws.

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(f) *Marine sanctuaries.* Regulations governing fishing activities inside the boundaries of national marine sanctuaries are set forth in 15 CFR part 922.

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