



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 231013-0247]

RIN 0648-BL70

Magnuson-Stevens Act Provisions; Prohibition of Commercial Fishing in the Northeast Canyons and Seamounts Marine National Monument

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes regulations for the Northeast Canyons and Seamounts Marine National Monument (the Monument). This action is necessary to conform U.S. fishing regulations consistent with Presidential Proclamations 9496 and 10287, which prohibited commercial fishing in the Northeast Canyons and Seamounts Marine National Monument and directed the Secretaries of Commerce and Interior to promulgate regulations necessary for the proper care and management of the Northeast Canyons and Seamounts Marine National Monument. The measures herein are intended to define the boundary coordinates of the Monument area and reflect the prohibition on commercial fishing in the Magnuson-Stevens Act regulations.

DATES: Comments must be received on or before *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2023-0093, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-

0093 in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, 978-281-9184.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 2016, the Monument was designated in the waters of the North Atlantic (Presidential Proclamation 9496; 81 FR 65161; September 21, 2016) to include both a Canyons unit and a Seamounts Unit. This Proclamation prohibited commercial fishing within the Monument, with a 7-year exemption for the American lobster and Atlantic deep-sea red crab fisheries. In June 2020, Monument prohibitions were revised via Proclamation 10049 (85 FR 35793, June 11, 2020) removing commercial fishing from the list of prohibited activities set forth in the 2016 Proclamation. Most recently, in October 2021, Proclamation 10287 (86 FR 57349; October 15, 2021) restored commercial fishing to the list of prohibited activities, providing “for the prohibition of all commercial fishing in the Monument, except for red crab and American lobster commercial fishing, which may be permitted until September 15, 2023.”

Proposed Measures

Consistent with Proclamation 10287 (68 FR 57349; October 15, 2021) and the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-

Stevens Act), this action proposes to define the boundary coordinates of the Monument area in the Magnuson-Stevens Act regulations at 50 CFR 600.10. Tables 1 and 2 below include coordinates for the Canyons and Seamounts Units.

Table 1 -- Canyons Unit Coordinates

Point	N Latitude	W Longitude
1	40° 31.62'	68° 16.08'
2	40° 36.00'	67° 37.68'
3	40° 12.42'	67° 34.68'
4	40° 7.32'	68° 12.72'
1	40° 31.62'	68° 16.08'

Table 2 -- Seamounts Unit Coordinates

Point	N Latitude	W Longitude
1	40° 2.64'	67° 43.32'
2	39° 56.34'	(a)
3	38° 51.90'	(b)
1	40° 2.64'	67° 43.32'

(a) U.S. exclusive economic zone (EEZ) longitude, approximately 65° 56.58'

(b) U.S. EEZ longitude, approximately 66° 55.86'

This rule also proposes to reflect the Proclamation's prohibition on commercial fishing within the boundaries of the Monument in the Magnuson-Stevens Act prohibitions at § 600.725 and clarify that commercial fishermen may transit through the Monument area if fishing gear is stowed and not available for immediate use during passage through the Monument.

We are soliciting public comments on the proposed regulations, as summarized in this rule.

Classification

NMFS is issuing this rule pursuant to section 305(d) of the Magnuson-Stevens Act to carry out section 303(a)(1)(C). This action is necessary to promulgate regulations (at § 600.10 and § 600.725) to ensure that all fishery management plans implemented by the Secretary of Commerce are consistent with, and conform to, the Proclamations and the Antiquities Act by ensuring clearly articulated measures that apply to all commercial fishing vessels operating in the

EEZ. The NMFS Assistant Administrator has determined that this proposed rule is consistent with other applicable law, subject to further consideration after public comment.

Because this action serves to bring the Magnuson-Stevens Act regulations into compliance with Presidential Proclamations 9496 and 10287, there is no decision-making process for NMFS. NMFS has no discretion. As a result, there is no decision-making process, no alternatives to comply with the Proclamations, and no public involvement in the decision. There is no “proposal” for action, as defined in section 1501.1(a)(5) of the Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA). Therefore, NEPA does not apply to this action.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

Regulatory Flexibility Act (RFA)

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This action incorporates the boundaries of the Monument area into the Magnuson-Stevens Act definitions at 50 CFR 600.10 and the commercial fishing prohibition into the Magnuson-Stevens Act prohibitions at § 600.725.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR § 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the three years, here from 2019 through 2021. The Small Business Administration (SBA) has established size standards for all other major

industry sectors in the U.S., including for-hire fishing (NAICS code 487210). These entities are classified as small businesses if combined annual receipts are not in excess of \$8.0 million for all its affiliated operations. As with commercial fishing businesses, the annual average of the three most recent years (2019-2021) is utilized in determining annual receipts for businesses primarily engaged in for-hire fishing.

The directly regulated entities are the firms that currently hold at least one Greater Atlantic Region commercial fishing permit that could be used to fish in the Monument. A few permit categories (Lobster: Areas 1, 2, 4, 5, 5 waiver program, 6, and Outer Cape Cod; General Category Scallop B) were not included when constructing the set of directly regulated entities because these permit categories do not enable a firm to fish in the Monument areas. There are a total of 1,338 small firms and 11 large firms subject to this action. Of those, a total of 1,024 small firms derive the majority of their revenue from commercial fishing operations, while 314 derive the majority of their revenue from for-hire recreational activities. Firms that are classified as “for-hire” may still fish commercially – these firms are included in the tabulation of directly regulated entities, although their main source of income (for-hire fishing) would not be directly impacted by the proposed action.

Table 3 describes numbers of directly regulated entities, their main activities, and their revenues from various sources. The distribution of gross receipts for both classes is highly right-skewed: There are many firms with a small to moderate amount of gross receipts and a handful of firms with much more economic activity. This results in the average receipts being higher than the 75th percentile of gross receipts for these two groups.

Table 3 – Number and Characterization of the Directly Regulated Entities (2020 dollars)

Size	Type	Firms	Vessels	Average Gross Receipts	Average For-Hire Receipts	25th Percentile Gross Receipts	75th Percentile Gross Receipts
Large	Fishing	11	151	\$19,944,000	\$0	\$15,463,000	\$24,445,000
Small	Fishing	1,024	1,519	\$717,000	\$1,000	\$56,000	\$681,000

Small	For-Hire	314	380	\$144,000	\$142,000	\$7,000	\$85,000
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As stated above, this action incorporates the boundaries of the Monument area into the Magnuson-Stevens Act definitions at 50 CFR 600.10 and the commercial fishing prohibition into the Magnuson-Stevens Act prohibitions at § 600.725. While 1,338 small firms and 11 large firms hold permits that overlap with the Monument area, the monument has been closed to commercial fishing since October 2021. Because fishing was previously prohibited, this action will have no additional effect on regulated entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 600.

Fisheries, Fishing

Dated: October 13, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 600 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 § 600.10, add the definition for “Northeast Canyons and Seamounts Marine National Monument” in alphabetical order to read as follows:

§ 600.10 Definitions

* * * * *

Northeast Canyons and Seamounts Marine National Monument means the area designated by Presidential Proclamation 9496, consisting of:

(1) *Canyons Unit*. The Canyons Unit is defined by the area bounded by straight lines connecting the following points, in the order stated:

Point	N Latitude	W Longitude
1	40° 31.62'	68° 16.08'
2	40° 36.00'	67° 37.68'
3	40° 12.42'	67° 34.68'
4	40° 7.32'	68° 12.72'
1	40° 31.62'	68° 16.08'

(2) *Seamounts Unit*. The Seamounts Unit is defined by the area bounded by straight lines connecting the following points, except between points 1 and 2, where the boundary follows the outer limits of the U.S. EEZ:

Point	N Latitude	W Longitude
1	40° 2.64'	67° 43.32'
2	39° 56.34'	(a)
3	38° 51.90'	(b)
1	40° 2.64'	67° 43.32'

(a) U.S. EEZ longitude, approximately 65° 56.58'

(b) U.S. EEZ longitude, approximately 66° 55.86'

* * * * *

3. In § 600.725, add paragraph (x) to read as follows:

§ 600.725 General prohibitions

* * * * *

(x) Fish for commercial purposes within the Northeast Canyons and Seamounts Marine

National Monument, as defined in § 600.10, consistent with Presidential Proclamations 9496 and 10287. Fishing for commercial purposes means fishing that is intended to, or results in, the barter, trade, transfer, or sale of fish, either in whole or in part.

(1) Vessels may transit the Northeast Canyons and Seamounts Marine National Monument, provided commercial fishing gear is stowed and not available for immediate use during passage without interruption through the Northeast Canyons and Seamounts Marine National Monument.

(2) [Reserved]

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