

under the original terms of the conservation plan without the consent of the permittee:

(5) The following criteria must be used for determining whether and when extraordinary circumstances arise, where the government could request review of certain aspects of the conservation plan's program.

(i) NMFS will have the burden of demonstrating that such extraordinary circumstances exist, using the best scientific and commercial data available. Their findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species.

(ii) In deciding whether any extraordinary circumstances exist which might warrant requiring additional mitigation from a permittee, NMFS will consider, but not be limited to, the following factors:

(A) Size of the current range of affected species;

(B) Percentage of range adversely affected by the conservation plan;

(C) Percentage of range conserved by the conservation plan;

(D) Ecological significance of that portion of the range affected by the conservation plan;

(E) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan;

(F) Whether the conservation plan was originally designed to provide an overall net benefit to the affected species and contained measurable criteria for assessing the biological success of the conservation plan; and

(G) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) NMFS will not seek additional mitigation for a species from a permittee where the terms of a properly functioning conservation plan agreement were designed to provide an overall net benefit for that species and contained measurable criteria for the biological success of the conservation plan which have been or are being met.

(7) Nothing in this rule will be construed to limit or constrain NMFS or any other governmental agency from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

(h) *Effect of a permit.* Compliance with the terms of an incidental take permit constitutes compliance with the requirements of section 9 and 10 the ESA with respect to the species covered by the permit regardless of changes in circumstances, policy, and regulation,

unless a change in statute or court order specifically requires that assurances given in the original permit be modified or withdrawn.

Dated: May 21, 1997.

Donald J. Barry,

Acting Assistant Secretary, Fish, Wildlife, and Parks, Department of the Interior.

Dated: May 22, 1997.

Rolland A. Schmitt,

Acting Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970520121-7121-01; I.D. 050997A]

RIN 0648-XX83

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Control Date

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS announces that anyone entering the commercial Atlantic bluefish (*Pomatomus saltatrix*) fishery after May 29, 1997 (control date) will not be assured of future access to the bluefish resource in Federal waters if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that limits the number of participants in the fishery. This announcement is intended to promote awareness of potential eligibility criteria for future access to the commercial Atlantic bluefish fishery and to discourage new entries into this fishery based on economic speculation while the Mid-Atlantic Fishery Management Council (Council) contemplates whether and how access to the bluefish fishery in Federal waters should be controlled. The potential eligibility criteria may be based on historical participation, defined as any number of trips having any documented amount of Atlantic bluefish landings. This announcement, therefore, gives the public notice that they should locate and preserve records that substantiate and verify their participation in the commercial bluefish fishery in Federal waters.

DATES: Comments must be submitted by June 30, 1997.

ADDRESSES: Comments should be directed to David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Atlantic Bluefish (FMP) was developed by the Council and the Atlantic States Marine Fisheries Commission to address problems that would occur if the bluefish fishery were to expand significantly or if the bluefish resource were to decline. The FMP (55 FR 18729, May 4, 1990) noted that the stock had declined from peak abundance levels observed in the early 1980s. Relative to the future condition of the stock, the FMP cautioned that "without production of a strong year class in 1989, the population will likely continue to decline into the 1990s."

Bluefish was most recently assessed at the 23rd Northeast Regional Stock Assessment Workshop (SAW-23); results were published in January 1997. The stock is at a low level of abundance and is over-exploited. Current annual recreational catches of 12,000 metric tons (mt) are about 20 percent of the level of the early 1980s. Fully-recruited fishing mortality (F) rates for bluefish increased from 0.12 (10 percent exploitation) in 1988 to 0.51 (36 percent exploitation) in 1992. F in 1995 was 0.40 (29 percent exploitation), twice the level of the current overfishing reference point estimated in 1994 ($F_{MSY} = 0.20$; 16 percent exploitation). Spawning stock biomass (SSB) declined from 293,000 mt in 1986 to 110,000 mt in 1995, a decrease of 63 percent and an historic low. Recruitment at age 0 varied from 68 to 82 million fish during 1982-84, but has since declined substantially with the strongest recent year class recruiting in 1989 (65 million). Recruitment since 1989 has been below average and the 1993 and 1995 year classes (13 and 14 million fish respectively) are the poorest of the time series. SAW-23 advised that if recruitment continues to be poor, the decline in SSB can only be halted by restricting catches to very low levels. SAW-23 advised reducing F to 0.1 or below (≤ 8 percent exploitation) to halt the decline in SSB.

The Council intends to address whether and how to limit entry of commercial vessels or participants into this fishery in a future amendment to

the FMP. The Council's intent in making this announcement is to notify the industry that management regimes to control access into the fishery may be discussed and developed by the Council. The control date will help to distinguish bona fide established fishermen from speculative entrants to the fishery. Although fishermen are notified that entering the fishery after the control date will not assure them of future access to the bluefish resource on the grounds of previous participation, additional and/or other qualifying

criteria also may be applied. The Council may choose different and variably weighted methods to qualify fishermen, based on the type and length of participation in the fishery or on the quantity of landings.

This action does not commit the Council to develop any particular management regime or to use any specific criteria for determining entry to the fishery. The Council may choose a different control date, or may choose a management program that does not make use of such a date. The Council

may choose also to take no further action to control entry or access to the fishery. Any action by the Council will be taken pursuant to the requirement for FMP development established under the Magnuson-Stevens Act.

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

Dated: May 22, 1997.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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