

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

**Dated:** July 15, 2003.

**Virginia M. Fay,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 697

[Docket No. 030714172-3172-01; I.D. 063003A]

**RIN 0648-AR33**

#### Atlantic Striped Bass Conservation Act; Atlantic Striped Bass Fishery

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

**ACTION:** Advance Notice of Proposed Rulemaking (ANPR); request for comments.

**SUMMARY:** NMFS announces that it is considering potential revisions to the Federal Atlantic striped bass regulations for the U.S. Exclusive Economic Zone (EEZ) in response to recommendations from the Atlantic States Marine Fisheries Commission (Commission) to the Secretary of Commerce (Secretary). The Commission recommended that the Secretary remove the moratorium on the harvest of Atlantic striped bass in the EEZ after a 13-year closure; implement a 28-inch (71.1-cm) minimum size limit for the recreational and commercial Atlantic striped bass fisheries in the EEZ; and allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdiction. NMFS is soliciting comments with this notice regarding possible management measures and issues that NMFS should consider relative to these recommendations.

**DATES:** Written comments must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**) no later than 5 p.m. Eastern Standard Time on or before August 20, 2003.

**ADDRESSES:** Written comments must be sent to: Anne Lange, Chief, State-Federal Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Room 13317, Silver Spring, MD 20910. Comments may also be sent via fax to (301) 713-0596. Comments submitted via e-mail or Internet will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Tom Meyer, Fishery Management Biologist, (301) 713-2334, fax (301) 713-0596.

#### SUPPLEMENTARY INFORMATION:

##### Background

This ANPR is promulgated under the Atlantic Striped Bass Conservation Act (Act), Public Law 100-589, reproduced at 16 U.S.C. 1851 note. Section 9 of the Act requires the Secretary to promulgate regulations governing fishing for Atlantic striped bass in the EEZ that the Secretary determines: (1) are consistent with the national standards in Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1851); (2) are compatible with the fishery management plan for managing Atlantic striped bass and each Federal moratorium in effect on fishing for Atlantic striped bass within the coastal waters of a coastal state; (3) ensure the effectiveness of State regulations on fishing for Atlantic striped bass within the coastal waters of a coastal state; and (4) are sufficient to assure the long-term conservation of Atlantic striped bass populations. In developing the regulations, the Secretary is to consult with the Commission, the appropriate Regional Fishery Management Councils (Councils), and each affected Federal, state and local government entity.

Atlantic Striped Bass management is based on the Commission's Atlantic Striped Bass Interstate Fishery Management Plan (ISFMP), first adopted in 1981. From 1981 - 1994, four ISFMP Amendments were developed that provided a series of management measures that led to the rebuilding of the stocks. In 1995, the Commission declared the Atlantic striped bass population fully restored and implemented Amendment 5 to the ISFMP to perpetuate the stock so as to allow a commercial and recreational harvest consistent with the long-term maintenance of the striped bass stock. Since then the population has expanded to record levels of abundance. To maintain this recovered population, the Commission approved Amendment 6 to the ISFMP (Amendment 6) in February 2003 (copies of Amendment 6 are available via the Commission's website at [www.asmfc.org](http://www.asmfc.org)). The Commission believes that the measures contained in Amendment 6 are necessary to prevent the overfishing of the Atlantic striped bass resource while allowing growth in both the commercial and recreational fishery. Development of Amendment 6 took almost four years and involved extensive input from technical and industry advisors, and provided

numerous opportunities for the public to comment on the future management of the species.

Amendment 6 incorporates results of the most recent Atlantic striped bass stock assessment, developed by the Atlantic Coast States, the Commission, NMFS, and the U.S. Fish and Wildlife Service (see section 1.2.2 of Amendment 6). In summary, the 2001 stock assessment concluded that the overall abundance of the stock is very high and fishing mortality remains below the target rate. The stock's abundance increased steadily between 1982 and 1997 and since then has remained stable. The fishing mortality rate increased steadily until 1999, but decreased slightly in 2000. Amendment 6 also includes recommendations to the Secretary on the development of complementary measures in the EEZ. Management of Atlantic striped bass in the EEZ was one of the issues that was considered throughout development of Amendment 6.

##### Recommendation to the Secretary

On April 24, 2003, the Secretary received a letter from the Commission with the following three recommendations for implementation of regulations in the EEZ: (1) Remove the moratorium on the harvest of Atlantic striped bass in the EEZ; (2) implement a 28-inch (71.1 cm) minimum size limit for recreational and commercial Atlantic striped bass fisheries in the EEZ; and (3) allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdictions.

In support of its request, the Commission provided a number of reasons to justify opening the EEZ to striped bass fishing. These reasons include:

(1) In 1995, due in part to a closure of the EEZ in 1990 to striped bass harvest, the population of this species was declared fully restored by the Commission. The purpose of closing the EEZ was to protect strong year classes entering the population and to promote rebuilding of the overfished population.

(2) The commercial harvest is controlled by hard quotas; when they are reached the fishery is closed; and overages are taken out of next year's quotas. The Commercial quota will be landed regardless of whether or not the EEZ is opened.

(3) Currently, recreational and commercial catches are occurring in the EEZ and these fish are required to be discarded. Opening the EEZ will convert discarded bycatch of striped bass to landings.

(4) Because of management measures implemented since 1990, the striped

bass population has recovered to a point where further examination of whether this fishery should occur in the EEZ is appropriate. There are expectations among a number of fishing industry stakeholders that their past sacrifices would result in future opportunities to harvest striped bass, and therefore, there are potential credibility issues associated with keeping the EEZ closed, especially in light of the current status of the Atlantic striped bass stock.

(5) The recommendation to open the EEZ is part of Amendment 6 which incorporates new management standards to ensure stock conservation including targets and thresholds for both mortality and spawning stock biomass. Fishing mortality is currently below the target level, and spawning stock biomass is 1.5 times the target level.

(6) Amendment 6 includes monitoring requirements and triggers that will

allow the Commission to respond quickly to increased mortality.

(7) The bulk of the public comment (greater than 75 percent) received in opposition cited expansion of the commercial fishery as rationale not to open the EEZ. The Commission believes the rationale is incorrect because the commercial fishery is controlled by a hard quota.

The Commission stated that its Atlantic Striped Bass Technical Committee would monitor annually the Atlantic striped bass population, and, if at some point in the future the Commission determines that the Atlantic striped bass population is overfished or that overfishing is occurring, it may recommend further management measures for the EEZ.

NMFS is considering proposed rulemaking to revise the Federal Atlantic striped bass regulations to be compatible with Amendment 6 and is

seeking comments on implementation of the Commission's recommendations in the EEZ. After review of comments received from this notice, NMFS will decide whether to initiate a lengthy review and decision-making process, which would include preparation of either an Environmental Impact Statement or an Environmental Assessment, and the development of management measures to revise current Federal regulations for Atlantic striped bass in the EEZ.

**Authority:** 16 U.S.C. 1851 note.

Dated: July 15, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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