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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990119022-9022-01; I.D. 111998B]

RIN 0648-AM13

Fisheries of the Northeastern United States; Amendment 1 to the Atlantic Salmon Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 1 to the Atlantic Salmon Fishery Management Plan (FMP). Specifically, this proposed rule would establish a framework process to add or adjust Atlantic salmon aquaculture management measures, if necessary, to meet the goals and objectives of the Atlantic Salmon FMP. Amendment 1 to the FMP also proposes to add an Atlantic salmon overfishing definition.

DATES: Comments must be received on or before March 22, 1999.

ADDRESSES: Comments on this proposed rule should be sent to Jon C. Rittgers, Acting Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Proposed Rule for Amendment 1 to the Atlantic Salmon FMP."

Copies of the Amendment, its regulatory impact review (RIR), environmental assessment (EA), and supporting documents are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1036.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Van Pelt, Fishery Management Specialist, 978-281-9244.

SUPPLEMENTARY INFORMATION: The Sustainable Fisheries Act of 1996 (SFA) requires the Regional Fishery Management Councils to identify and describe essential fish habitat (EFH) for the species managed. NMFS issued a notice of availability that invited public comments on Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea

Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP in the **Federal Register** on December 1, 1998 (63 FR 66110), with a comment period ending date for these amendments of February 1, 1999. These amendments are part of a larger document (omnibus amendment) submitted by the New England Fishery Management Council (NEFMC) for Secretarial review that includes Amendment 1 to the Monkfish FMP prepared jointly by NEFMC and the Mid-Atlantic Fishery Management Council (MAFMC). Because the MAFMC had not yet adopted Monkfish Amendment 1 at the time of the NEFMC's submission of the omnibus amendment to NMFS, the notice of availability published on December 1, 1998 did not invite public comments on Amendment 1 to the Monkfish FMP. Also, the omnibus amendment also includes the EFH components of the Atlantic Herring FMP that is being developed by the NEFMC. The EFH information for Atlantic Herring will be incorporated by reference into the Atlantic Herring FMP when that FMP is submitted for Secretarial approval; therefore, public comments were not invited on the EFH components for Atlantic herring in the aforementioned notice of availability published on December 1, 1998. On December 7, 1998, NMFS issued an amendment to the notice of availability (NOA) published on December 1, 1998, in the **Federal Register** (63 FR 67450), notifying the public that in addition to EFH components, Amendment 1 to the Atlantic Salmon FMP also contains a discussion of an overfishing definition and an aquaculture framework adjustment process for Atlantic salmon. The comment period ending date for those components for Amendment 1 to the Atlantic Salmon FMP is also February 1, 1999. Finally, NMFS issued another amendment to the notice of availability published on December 1, 1998, advising the public that a proposed rule would be published in the **Federal Register** soon, inviting public comments on the proposed framework adjustment process for possible aquaculture operations for Atlantic salmon. The only proposed implementing regulations contained in this omnibus amendment are those related to the Atlantic Salmon FMP.

Proposed Management Measures

Amendment 1 to the Atlantic Salmon FMP proposes to add a definition for Atlantic salmon overfishing and to add a mechanism to allow Atlantic salmon aquaculture management measures to be added or adjusted through a framework adjustment process.

Although salmon is overfished, no additional management measures are proposed by this amendment. Management measures currently in place prohibit harvesting of salmon from Federal waters. As a result, NMFS sent a letter to the NEFMC informing it that since everything within the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) has been done to rebuild this overfished stock, no further action was required to comply with the rebuilding provision of the Magnuson-Stevens Act (Section 304(c)).

This amendment includes a definition of overfishing which was certified with reservation by the Northeast Fisheries Science Center as follows:

The overfishing definition is based on the assumption that the number of spawning salmon corresponding to MSY is 54,000 (a proxy for B_{MSY}), and that fishing mortality on the current stock of 200 fish should be zero. The stock size is currently well below $\frac{1}{2} B_{MSY}$ and B_{limit} (the biomass [or number of spawners] from which the stock could be rebuilt to B_{MSY} in 10 years). The amendment does not specify a fishing mortality limit or threshold appropriate for a rebuilt stock, or the stock size above which the fishing mortality rate could be greater than zero. However, given the current status of the stock and protracted rebuilding period, we are unlikely to achieve these thresholds in the near future.

We will continue to monitor stock conditions for Atlantic salmon and study life history. We will recommend adjustments if and when necessary.

In order to allow Atlantic salmon aquaculture projects to be conducted in the EEZ consistent with the goals and objectives of the Atlantic Salmon FMP, it may be necessary to add or adjust Atlantic salmon aquaculture management measures. For the sake of efficiency, this proposed rule would establish a framework process for adding or adjusting Atlantic salmon management measures which is consistent with the processes proposed under Amendment 9 to the Northeast Multispecies FMP and Amendment 7 for the Atlantic Sea Scallop FMP both of which were developed by the NEFMC to bring the applicable FMPs into compliance with the SFA requirements. Amendments 9 and 7, respectively, are currently under Secretarial review.

This action would allow the Council and NMFS to adjust or add one or more of the Atlantic salmon aquaculture management measures identified in Amendment 1, including, but not limited to: minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area

closures, and establishment of special management areas or zones.

Classification

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the Magnuson-Stevens Act and with other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and 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 rulemaking establishes a framework adjustment mechanism or process, but has no immediate economic or social impacts. Future actions taken to initiate Atlantic salmon aquaculture through this framework process would have their own supporting analyses of economic and social impacts. As a result, an initial regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 1, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. Section 648.41 is added to read as follows:

§ 648.41 Framework specifications.

(a) *Within season management action.*

The Council may, at any time, initiate action to add or adjust Atlantic salmon aquaculture management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Atlantic Salmon FMP.

(b) *Adjustment process.* The Council shall develop and analyze appropriate aquaculture management measures over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to aquaculture management measures, must come from one or more of the following categories: minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones and any other management measures currently included in the FMP.

(c) *NEFMC recommendation.* After developing aquaculture management actions and receiving public testimony, the NEFMC shall make a recommendation to the Regional Administrator. The NEFMC's recommendation must include supporting rationale and, if aquaculture management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the aquaculture management measures as a final rule. If the NEFMC recommends that the aquaculture management measures should be issued as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended aquaculture management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be

in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended aquaculture management measures.

(3) Whether there is an immediate need to protect the resource.

(4) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(d) *Regional Administrator action.* If the NEFMC's recommendation includes adjustments or additions to aquaculture management measures and, after reviewing the NEFMC's recommendation and supporting information:

(1) If the Regional Administrator concurs with the NEFMC's recommended aquaculture management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(2) If the Regional Administrator concurs with the NEFMC's recommendation and determines that the recommended aquaculture management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the Federal Register. After additional public comment, if the Regional Administrator concurs with the NEFMC recommendation, the measures will be issued as a final rule in the **Federal Register**.

(3) If the Regional Administrator does not concur, the NEFMC will be notified in writing of the reasons for the non-concurrence.

(e) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

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