

public will be given the opportunity to comment on future proposed regulations.

### Critical Habitat

“Critical habitat” is defined in section 3 of the ESA (16 U.S.C. 1532(3)) as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, in which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. “Conservation” is defined as the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary.

Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the maximum extent prudent and determinable, critical habitat be designated, concurrently, with the listing of a species. Section 4(b)(6)(C)(ii) of the ESA, 16 U.S.C. 1533(b)(6)(C)(ii), provides for additional time to promulgate a critical habitat designation if such designation is not determinable at the time of final listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat.

NMFS has determined that designation of critical habitat is not determinable at this time. NMFS will complete ongoing research and gather and review other ongoing studies on the habitat use and requirements of smalltooth sawfish to attempt to identify smalltooth sawfish nursery and breeding areas. Once these and other habitat areas are identified and mapped, NMFS will publish, in a separate rule, a proposed designation of critical habitat for the U.S. DPS of smalltooth sawfish, to the maximum extent prudent and determinable.

### References Cited

Evermann, B.W. and B. A. Bean. 1897(1898). Indian River and its fishers. U. S. Comm. Fish., Rep. Comm 22:227–248.

Musick, J.A., M.M. Harbin, S. A. Berkeley, G.H. Burgess, A. M. Eklund, L. Findley, R.G. Gilmore, J.T. Golden, D.S. Ha, G.R. Hunstman, J.C. McGovern, S.J. Parker, S.G. Poss, E. Sala, T.W. Schmidt, G.R. Sedberry, H. Weeks, and S.G.

Wright. 200. Marine estuarine, and diadromous fish stocks at risk of extinction in North America. Fisheries 25(11):6–30.

Simpfendorfer, C.A. 2000(a). Predicting population recovery rates for endangered western Atlantic sawfishes using demographic analysis. Environmental Biology of Fishes 58: 371–377.

### Classification

*Regulatory Flexibility Act and Executive Order 12866*

The Conference Report on the 1982 amendments to the ESA notes that economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, listing actions are not subject to review under Executive Order 12866.

*National Environmental Policy Act*

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F.2d 825 (6th Cir.1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act. (See also NOAA Administrative Order 216–6.)

*Executive Order 13132, Federalism*

Smalltooth sawfish records and data were collected by the status review team from appropriate state fishery managers and incorporated into the Status Review. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS intends to engage in formal and informal contacts with states, other affected local and regional entities, and those engaged in ongoing conservation and recovery efforts for the smalltooth sawfish.

### List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation

Dated: March 25, 2003.

**Rebecca Lent,**

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

■ For reasons set out in the preamble, 50 CFR part 224 is amended as follows:

### PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority for part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. In § 224.101, paragraph (a) is revised by inserting the following text after “Shortnose sturgeon (*Acipenser brevirostrum*)” and before “Totoaba (*Cynoscion macdonaldi*)”: “Smalltooth sawfish (*Pristis pectinata*) in the United States; Atlantic salmon (*Salmo salar*) Gulf of Maine population, including naturally reproducing populations and those river-specific hatchery populations cultured from them;”.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 230

[Doc. No. 030324070–3070–01, I.D. 030703C]

### Whaling Provisions: Aboriginal Subsistence Whaling Quotas

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

**ACTION:** Notification of aboriginal subsistence whaling quota.

**SUMMARY:** NMFS announces the aboriginal subsistence whaling quota for bowhead whales, and other limitations deriving from regulations adopted at the 2002 Special Meeting of the International Whaling Commission (IWC). For 2003, the quota is 75 bowhead whales struck. This quota and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC).

**DATES:** Effective April 1, 2003.

**ADDRESSES:** Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Chris Yates, (301) 713–2322.

**SUPPLEMENTARY INFORMATION:** Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*). Regulations that implement the Act, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 2002 Special Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of 2 Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5-year block quota of 280 bowhead whales landed. For each

of the years 2003 through 2007, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1998 through 2002 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any 1 year. At the end of the 2002 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2003 is 82 (67 + 15).

This arrangement ensures that the total quota of bowhead whales landed and struck in 2003 will not exceed the quotas set by the IWC. Under an arrangement between the United States and the Russian Federation, the Russian natives may use no more than seven strikes, and the Alaska Eskimos may use no more than 75 strikes.

NOAA is assigning 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC, and will ensure that its hunters use no more than 75 strikes.

#### **Other Limitations**

The IWC regulations, as well as the NOAA rule at 50 CFR 230.4(c), forbid

the taking of calves or any whale accompanied by a calf.

NOAA rules (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: March 25, 2003.

#### **Rebecca Lent,**

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

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