

of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to section 777(i) of the Act.

Dated: January 22, 2004.

**James J. Jochum,**  
Assistant Secretary for Import Administration.

## Appendix I—Issues and Decision Memorandum

### Analysis of Programs

- I. Programs Determined to Be Countervailable
  - A. Private Forest Development Program (PFDF)
- II. Programs Determined to Be Not Used
  - A. Provincial Stumpage Program
  - B. Export Assistance under the Societe de Developpement Industrial du Quebec (SDI)/Investissement Quebec (IQ)
  - C. Assistance under Articles 7 and 28 of the SDI
  - D. Assistance from the Societe de Recuperation d'Exploitation et de Developpement Forestiers du Quebec (Rexfor)
- III. Total Ad Valorem Rate
- IV. Recommendation

[FR Doc. 04-1989 Filed 1-29-04; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### United States Travel and Tourism Promotion Advisory Board

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice of open meeting.

*Date:* February 11, 2004.

*Time:* 10 a.m.–12 p.m.

*Place:* Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza East, Washington, DC 20001.

**SUMMARY:** The United States Travel and Tourism Promotion Advisory Board (“Board”) will hold a Board meeting on February 11, 2004 at the Loews L'Enfant Plaza Hotel.

The Board will discuss the design, development and subsequent implementation of an international advertising and promotional campaign, which will seek to encourage individuals from select countries to travel to the United States for the express purpose of engaging in tourism. The meeting will be open to the public. Time will be permitted for public comment. To sign up for public comment, please contact Julie Heizer by 5 p.m. EST Monday, February 9, 2004.

She may be contacted at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 7025, Washington, DC 20230; via fax at (202) 482-2887; or, via e-mail at [promotion@tinet.ita.doc.gov](mailto:promotion@tinet.ita.doc.gov).

Written comments concerning Board affairs are welcome anytime before or after the meeting. Written comments should be directed to Julie Heizer. Minutes will be available within 30 days of this meeting.

The Board is mandated by Public Law 108-7, Section 210. As directed by Public Law 108-7, Section 210, the Secretary of Commerce shall design, develop and implement an international advertising and promotional campaign, which seeks to encourage individuals to travel to the United States. The Board shall recommend to the Secretary of Commerce the appropriate coordinated activities for funding. This campaign shall be a multi-media effort that seeks to leverage the Federal dollars with contributions of cash and in-kind products unique to the travel and tourism industry. The Board was chartered in August of 2003 and will expire on August 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Julie Heizer, Office of Travel and Tourism Industries (OTTI), International Trade Administration, U.S. Department of Commerce at (202) 482-4904. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OTTI.

Dated: January 16, 2004.

**Julie Heizer,**  
Deputy Director for Industry Relations, Office of Travel and Tourism Industries.

[FR Doc. 04-1980 Filed 1-29-04; 8:45 am]

**BILLING CODE 3510-25-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 040114019-4019-01; I.D. 121903C]**

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List Winter Flounder and Cunner as Threatened or Endangered

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

**ACTION:** Notice of petition finding.

**SUMMARY:** NMFS has received a petition to add winter flounder

(*Pseudopleuronectes americanus*) and cunner (*Tautogolabrus adspersus*) from western Long Island Sound to the list of threatened and endangered wildlife under the Endangered Species Act (ESA) of 1973, as amended. NMFS has determined that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted at this time.

**DATES:** This finding becomes effective on March 1, 2004.

**ADDRESSES:** Comments or questions concerning this petition finding should be sent to Mary Colligan, NMFS, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Kim Damon-Randall, NMFS Northeast Region, 978-281-9328 ext. 6535, or Marta Nammack, NMFS Office of Protected Resources, 301-713-1401, ext. 180.

### SUPPLEMENTARY INFORMATION:

#### Background and Analysis of Petition

Under Section 4(b)(3)(A) of the ESA, to the maximum extent practicable, within 90 days after receiving a petition to list a species under the ESA, the Secretary of Commerce (Secretary) must make a finding whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding must be promptly published in the **Federal Register**. In determining whether a petition contains substantial information, NMFS takes into account information submitted with and referenced in the petition and all other information readily available in NMFS' files. NMFS' ESA implementing regulations at 50 CFR 424.14(b)(1) define “substantial information” as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. If the petition is found to present such information, the Secretary must conduct a status review of the involved species and make a determination whether the petitioned action is warranted within 12 months of receipt of the petition. In making a finding on a petition to list a species, the Secretary must consider whether such a petition (i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species;

(iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

On May 27, 2003, the Assistant Administrator received a petition dated May 15, 2003, from Arthur Glowka to list the western Long Island Sound populations of winter flounder and cunner as endangered or threatened under the ESA. The information contained in the petition focuses on the results of the Environmental Protection Agency's (EPA) efforts to restore water quality in the Sound. It is the petitioner's contention that EPA's efforts to reduce nutrient loading through the implementation of Total Maximum Daily Loads (TMDL) for various pollutants has starved the plankton in the Sound, thereby affecting the entire food web and resulting in declines in the number, size, and robustness of many sport fish.

Under the ESA, a listing determination can address a species, subspecies, or distinct population segment (DPS) of a species (16 U.S.C. 1532(15)). A DPS is, in short, a vertebrate population that is discrete in relation to the remainder of the species to which it belongs and significant to the species to which it belongs (61 FR 4722; February 7, 1996). The petitioner requested listing both winter flounder and cunner from western Long Island Sound only. The petitioner states, "we feel that the population of winter flounder and cunner in western Long Island Sound have decreased to such low numbers that they may never recover and are good candidates for endangered/threatened status." The information contained in the petition focuses on impacts to these species that occur in the western portion of the Sound. As such, NMFS first attempted to identify the boundary or boundaries of the population that includes the fish from western Long Island Sound and assess whether available information indicated that the population may warrant listing under the ESA.

NMFS evaluated whether the information provided or cited in the petition met the ESA's standard for "substantial information." We reviewed information that is readily available to NMFS scientists and consulted fisheries experts from the state of Connecticut to determine whether the petitioned action may be warranted and if available information supports the identification

of DPSs for these species in western Long Island Sound.

#### *Cunner*

Cunner are widespread along the Atlantic coast and offshore banks of North America, from the eastern coast of Northern Newfoundland, southward in abundance to New Jersey, and as far south as the mouth of the Chesapeake Bay (Collette and Klein-MacPhee 2002). While the petitioner presents some anecdotal evidence which suggests that there may have been a decline in the number of cunner in Long Island Sound, there is not sufficient scientific or commercial information available to support the petition. There is little to no information available about the population structure and genetics of the species. As such, NMFS finds that the petition does not present substantial scientific or commercial information indicating that listing of cunner in western Long Island Sound may be warranted.

#### *Winter Flounder*

Winter flounder are managed federally as three separate stocks the Gulf of Maine, southern New England/Middle Atlantic, and Georges Bank. The petitioner defines western Long Island Sound as "a line drawn north to south from Norwalk, CT to Eaton's Neck, Long Island, NY and the waters which lie to the west to the Throgs Neck Bridge in New York City." Winter flounder from this area are currently included in the southern New England/Middle Atlantic stock.

Genetic, morphometric, and life history information support these broad-scale divisions. Dr. Isaac Wirgin from the Nelson Institute of Environmental Medicine, New York University School of Medicine, used microsatellite analysis of nuclear DNA in an attempt to verify that these stock divisions were appropriate (Wirgin 2003). According to Wirgin (2003), the overall results showed that stocks south of Cape Cod were usually genetically distinct from the stock at Georges Bank. Two of the three areas sampled north of Cape Cod exhibited significant genetic differences from fish sampled from Georges Bank. Therefore, preliminary evidence suggests genetic discreteness for fish from the Gulf of Maine, Georges Bank, and Southern New England/Middle Atlantic regions. Also, according to Collette and Klein-MacPhee (2002), winter flounder may be separated into different local races based on varying characteristics such as fin ray counts and maximum size. Fish from Georges Bank have been documented to have a greater number of dorsal and anal fin

rays, larger maximum sizes, different coloration, and different spawning seasons as fish from other parts of this species' range. The best available information supports the broad scale stock divisions currently employed by Federal fishery managers.

Available data also indicate the possibility of smaller divisions within the New England/Middle Atlantic stock. Most, but not all, collections that were taken south of Cape Cod were genetically distinct from those sampled in nearby areas to the south and north (Wirgin 2003). According to Dr. Wirgin (2003), collections from Peconic Bay, NY were significantly different from samples taken in Mt. Hope Bay, RI, and Jamaica Bay, NY. Highly significant genetic differences were also found among many, but not all, estuaries south of Cape Cod. In many cases, significant differences were found between geographically adjacent collections.

However, no significant differences were found among the three estuaries sampled in Long Island Sound the Connecticut River, New Haven Harbor, and Manhasset Bay. Samples from the collection from Mt. Hope Bay, Rhode Island (the nearest sampling site to the north) were significantly different from those samples from the Connecticut River. According to Dr. Wirgin, "this suggests that reproductive isolation among estuaries in western Long Island Sound (west of the Connecticut) may be weak and that young life stages may mix or that homing fidelity in the area is not great." This information is preliminary and, according to Dr. Wirgin, more areas should be sampled and larger sample sizes should be taken before a definitive conclusion regarding the genetic distinctness of fish from western Long Island Sound can be proven. Also, in order to determine if most individual estuaries are genetically distinct or if fish in estuaries in different geographic regions are separate genetic units, it is necessary to sample more immediately contiguous estuaries (Wirgin 2003).

The petition asserts that the winter flounder populations in western Long Island Sound should be listed as either threatened or endangered. By specifying the populations in western Long Island Sound, the petitioner attempts to distinguish between fish from the western portion of the Sound and the remainder of Long Island Sound, which is all part of the southern New England/Middle Atlantic stock. However, current scientific data do not suggest that fish from the western portion of the Sound are discrete from fish from the remainder of the Sound because, as discussed above, the samples taken near the Connecticut River were genetically

similar to those from areas farther west in the Sound. Also, current information is insufficient to conclude whether fish from Long Island Sound as a whole represent a discrete population and, therefore, should be considered separate from fish from the remainder of the Southern New England/Middle Atlantic stock. As such, we will consider the Southern New England/Middle Atlantic stock to be a separate stock for the purposes of this petition. Information on the status of the Southern New England/Middle Atlantic stock will be considered to determine whether it should be listed as threatened or endangered under the ESA. If the available information were to indicate that the status of this stock may be threatened or endangered, NOAA Fisheries would need to do a thorough analysis in the status review to show that this stock meets the criteria for a DPS because under the ESA, only species, subspecies, and DPSs of vertebrate species can be listed.

#### **Southern New England/Middle Atlantic Population**

To assess whether there is sufficient information to indicate that listing this stock may be warranted, NMFS will consider available information on threats and status of winter flounder from the New England/Middle Atlantic region.

The petitioner asserts that EPA's program to reduce nutrient loading to the Sound has resulted in significant reductions in primary production resulting in declines in abundance and size of once numerous sport fish, including winter flounder and cunner. Available information does not indicate that the New England/Middle Atlantic stock of cunner and winter flounder are limited by primary production. In fact the EPA's program has most likely benefited the species. According to the EPA, total nitrogen loads from point sources to the waters of the Sound have decreased significantly over the last ten years as sewage treatment plants (STPs) have implemented more stringent controls. In the summer, hypoxia has had a significant adverse impact on the aquatic habitat and residents of the Sound. Hypoxia is generally most severe in bottom waters. Winter flounder are demersal and as such, they may encounter areas with depleted oxygen concentrations. A reduction in hypoxia would result in an increase in the amount of habitat available for this and other demersal species.

EPA has indicated that although there has been a reduction in the areal extent and duration of hypoxic events since the late 1980s in Long Island Sound,

summer hypoxia still represents a significant impairment to the water quality of the Sound and still continues to adversely affect the living marine resources present (EPA 2002). As such, the states of Connecticut and New York have completed and the EPA has approved a TMDL plan for nitrogen. It is assumed that this program will result in a reduction in anthropogenic inputs of nitrogen to the Sound (EPA 2002).

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act in 1996, requires that the regional fishery management councils describe and identify essential fish habitat (EFH), identify actions to conserve and enhance that EFH, and minimize the adverse effects of fishing on EFH to the extent practicable. EFH has been defined by Congress as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." EFH has been identified for all life stages of winter flounder in Long Island Sound and many other bays and estuaries located in the Southern New England/Middle Atlantic region. As such, actions that affect the habitat in these areas are subject to EFH consultation. The available information suggests that the regulatory mechanisms to conserve existing habitat and restore areas within this region are sufficient to protect this species.

The petitioner asserts that predation has not had a significant role in the decline in winter flounder in western Long Island Sound. Available information and that contained in the petition is not sufficient to conclude that an increase in predation has resulted in the decline in winter flounder abundance.

According to the Connecticut Department of Environmental Protection (CT DEP), the new winter flounder index for the spring obtained from the 2003 Long Island Sound Trawl Survey is 21.12 fish/tow which is down from 25.5 fish/tow in 2002. However, the geometric mean increased from 6.31 kg/tow in 2002 to 6.56 kg/tow in 2003 (Pers. Comm. Kurt Gottschall, CT DEP 2003). This indicates that the average size of winter flounder in Long Island may be increasing.

According to the information in the petition, winter flounder historically were the basis of a significant spring and fall recreational fishery. However, currently, there are no spring or fall winter flounder fishing tournaments due to the decline in abundance and size of fish caught. The 2002 stock assessment for winter flounder states that the Southern New England/Mid-

Atlantic winter flounder stock complex is overfished and overfishing is occurring. According to the 2002 stock assessment for winter flounder, "spawning stock biomass declined substantially from 13,000–14,000 metric tons (mt) during the early 1980s to only 2,700 mt during 1994–1996, but has increased since the mid 1990s to about 7,600 mt in 2001 due to reduced fishing mortality rates since 1997. The arithmetic average recruitment from 1981 to 2001 is 23.9 million age-1 fish, with a median of 18.9 million fish. Recent recruitment to the stock has been below average since 1989. The 2001 year class, at only 5.6 million fish, is the smallest in the 22-year time series." Therefore, while recruitment may be decreasing, the spawning stock biomass of the New England/Middle Atlantic stock of winter flounder seems to be increasing.

#### **Petition Finding**

After reviewing the information contained in the petition, as well as information readily available to NMFS' scientists, NMFS has determined that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted. For cunner, sufficient scientific or commercial information to support conducting a status review of cunner in western Long Island Sound is not currently available. For winter flounder, recent studies on nuclear DNA are not sufficient to support the contention that winter flounder from western Long Island Sound are a DPS, or that winter flounder from Long Island Sound are a DPS. While the petition states that winter flounder catches have declined in western Long Island Sound to such an extent that the population will not recover, NMFS does not believe that the information presented is substantial enough to warrant a status review at this time. This finding is supported by information contained within the 2002 stock assessment for winter flounder, which has shown an increase in spawning stock biomass of the Southern New England/Mid-Atlantic stock as a result of reduced fishing mortality rates. If new information becomes available to suggest that cunner and winter flounder may in fact warrant listing under the ESA, NMFS will reconsider conducting species status reviews.

#### **References**

Atlantic States Marine Fisheries Commission. 2003. Public information document for Amendment I to the Interstate Fishery Management Plan for Inshore Stocks of Winter Flounder.

Prepared by Lydia Munger, Fishery Management Plan Coordinator, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005.

Collette, B. B. and G. Klein-MacPhee, editors. 2002. Bigelow and Schroeder's Fishes of the Gulf of Maine. Smithsonian Institution Press, Washington DC.

Connecticut Department of Environmental Protection. 2002. A study of marine recreational fisheries in Connecticut. Federal Aid in Sport Fish Restoration. F-54-R-21 Annual Performance Report. March 1, 2001–February 28, 2002.

Connecticut Department of Environmental Protection. 2003. Marine Finfish Survey. Draft report in prep.

Environmental Protection Agency. 2002. The 2001 CCMP Implementation Tracking Report for January - December 2001. The Comprehensive Conservation and Management Plan - Long Island Sound Study.

Gottschall, K. 2003. Personal Communication. Connecticut Department of Environmental Protection, Marine Fisheries Division. Old Lyme, CT 06371.

Meise, C., J.S. Collie, J. Widman, P. Howell. 1999. Growth and mortality of juvenile winter flounder in two New England estuaries. *Estuaries* 22(2A):297–303.

Northeast Fisheries Science Center. 2003. Report of the 36th Northeast Regional Stock Assessment Workshop (36th SAW): Stock Assessment Review Committee (SARC)

Consensus Summary of Assessments. National Marine Fisheries Serv., Woods Hole Lab., 166 Water St., Woods Hole, MA 02543. Pp. 139–163.

Pereira, J.J., R. Goldberg, J.J. Ziskowski, P.L. Berrien, W.W. Morse, and D.L. Johnson. Essential fish habitat source document: winter flounder, *Pseudopleuronectes americanus*, life history and habitat characteristics. NOAA Technical Memorandum NMFS-NE-138. September 1999.

Wirgin, I. 2003. Stock identification and mixed stock analyses of winter flounder (*Pleuronectes americanus*). NYSG Completion Report. Submitted March 17, 2003.

**Authority:** 16 U.S.C. 1531 *et seq.*.

Dated: January 22, 2004.

**Rebecca Lent,**

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

[FR Doc. 04-1978 Filed 1-29-04; 8:45 am]

BILLING CODE 3510-22-S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Request for Public Comments on Commercial Availability Request under the African Growth and Opportunity Act (AGOA) and the Andean Trade Promotion and Drug Eradication Act (ATPDEA)

January 28, 2004.

**AGENCY:** The Committee for the Implementation of Textile Agreements

**ACTION:** Request for public comments concerning a request for a determination that two patented fusible interlining fabrics, used in the construction of waistbands, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and the ATPDEA.

**SUMMARY:** On January 20, 2004, the Chairman of CITA received a petition from Levi Strauss and Co. alleging that a certain ultra-fine Lycra crochet material cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that apparel containing waistbands of such fabrics be eligible for preferential treatment under the AGOA and the ATPDEA. CITA hereby solicits public comments on this request, in particular with regard to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by February 17, 2004, to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, DC 20230.

#### FOR FURTHER INFORMATION CONTACT:

Richard Stetson or Martin Walsh, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 112(b)(5)(B) of the AGOA; Section 1 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7350 of October 4, 2000; Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

#### Background

The AGOA and the ATPDEA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a

beneficiary country. The AGOA and the ATPDEA also provide for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191 (66 FR 7271) and pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606), CITA has been delegated the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA or the ATPDEA. On March 6, 2001, CITA published procedures that it will follow in considering requests (66 FR 13502).

On January 20, 2004, the Chairman of CITA received a petition from Levi Strauss and Co. alleging that certain ultra-fine Lycra crochet outer-fusible material with a fold line that is knitted into the fabric and a fine Lycra crochet inner-fusible material with an adhesive coating that is applied after going through a finishing process to remove all shrinkage from the product, classified under item 5903.90.2500 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles (waistbands), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the AGOA and the ATPDEA for apparel articles that are both cut and sewn in one or more AGOA or ATPDEA beneficiary countries utilizing such fabrics.

#### The two fabrics at issue are:

##### Fusible Interlining 1 -

An ultra-fine Lycra crochet outer-fusible material with a fold line that is knitted into the fabric. A patent is pending for this fold-line fabric.

The fabric is a 45mm wide base substrate, crochet knitted in narrow width, synthetic fiber based (49% polyester/43% elastane/8% nylon with a weight of 4.4 oz., a 110/110 stretch and a dull yarn), stretch elastomeric material with adhesive coating that has the following characteristics:

- (a) The 45mm is divided as follows: 34mm solid followed by a 3mm seam allowing it to fold over followed by 8mm of solid.
- (b) In the length it exhibits excellent stretch and recovery properties at low extension levels.