DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[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: Withdrawal of a notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: On October 20, 2003, NMFS announced its intent to prepare an Environmental Impact Statement (EIS) and hold scoping meetings in accordance with the National Environmental Policy Act (NEPA). On September 7, 2006, the Assistant Administrator for Fisheries decided to withdraw NMFS' intent to prepare an EIS due the increase in the fishing mortality rate since the time of the original notice. The overwhelming public response to the rulemaking - the great majority of whom were in support of maintaining the closure - together with the clear public perception that large trophy sized fish congregate in the Exclusive Economic Zone (EEZ), suggests that fishing effort in an opened EEZ might markedly increase striped bass mortality above the already elevated current rates. Therefore, further processing of an EIS is no longer warranted. The notice of intent to prepare an EIS is withdrawn and the NEPA process is hereby terminated.

DATES: Effective September 14, 2006.

FOR FURTHER INFORMATION CONTACT: For any further information, contact Chris Moore, Chief, Partnerships and Communications Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13317, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 2003, the Atlantic States Marine Fisheries Commission (Commission) recommended that the Secretary of Commerce (Secretary) remove the moratorium on the harvest of striped bass in the EEZ and implement Federal regulations to compliment Commission measures in Amendment 6 to the Interstate Fishery Management Plan for Striped Bass (Amendment 6). In addition, the letter included rationale for the action and requested that the Secretary implement a 28–inch minimum size limit for the recreational and commercial striped bass fisheries in the EEZ and allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdiction.

In February 2003, the 2002 fishing mortality rate of F=0.28 was below the target level (F=0.30), whereas the female spawning stock biomass of 60.6 million pounds was 1.6 times the target level an all-time high. Under these ideal conditions, the Commission recommended to the Secretary to open the EEZ to striped bass fishing.

In response to the Commission recommendation, an advance notice of proposed rulemaking (ANPR) was published in the **Federal Register** on July 21, 2003 (68 FR 43074). The comment period closed on August 20, 2003. The comment period was subsequently reopened on August 26, 2003 (68 FR 51232), for an additional 30-days. NMFS announced that it was considering proposed rulemaking to revise Federal Atlantic striped bass regulations to be compatible with the Commission's Amendment 6, and was seeking comments on the implementation of the Commission's recommendations to the Secretary to open the EEZ to the harvest of Atlantic striped bass. NMFS also solicited comments on possible alternative management measures and issues relative to these recommendations.

After review of comments received from the public during the ANPR comment period, NMFS determined there were sufficient issues raised, both in support of, and in opposition to, the Commission's recommendation, to warrant further evaluation of the potential impacts of opening the EEZ to striped bass fishing. That determination resulted in the initiation of a decision-making process required under the NEPA. A Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of scoping process was published in the **Federal Register** on October 20, 2003 (68 FR 59906). The notice presented a summary of the ANPR comments, and requested further public input on a list of potential alternatives and other management measures. Public meetings were held in nine Atlantic coast states between November 5 and December 10, 2003, and public comment period closed on December 22, 2003.

Delay in the Development of an EIS

In September 2004, the Commission's Striped Bass Technical Committee (Technical Committee) prepared its 2004 Stock Assessment Report for use by the Striped Bass Management Board (Board), which included data through 2003. That assessment contradicted previous assessments which had indicated that the striped bass population was not overfished and continued to grow in abundance. Instead, the results indicated that the stock was overfished and that spawning stock biomass had been reduced to below target levels. However, given that results of tagging study analyses did not show a similar increase in fishing mortality, the members of the Technical Committee did not feel the assessment provided an accurate representation of stock status. As such, the Technical Committee recommended the 2004 assessment results not be used for management decisions until both the modeling software and the input data sets were reevaluated during the 2005 assessment process. As a result, the 2004 stock assessment has not been used by the Commission for management decisions. In addition, NMFS decided to delay the completion of the EIS to be able to incorporate the 2005 stock assessment in the EIS.

During 2005, the Technical Committee and Stock Assessment Subcommittee reviewed model inputs and the model itself to determine if the results from the 2004 assessment truly reflected status of the population or were an artifact of data or model errors. They concluded that a number of the indices used in the 2004 effort were not consistent with what was observed in the population as a whole, or were contradictory to the majority of other reliable time series. Those indices were removed from subsequent model runs. The Technical Committee believes the current assessment reflects the true status of the population, i.e., the stock is not overfished and overfishing is not occurring.

Further Public Participation

As a result of the new assessment results, NMFS decided to consider options for opening the EEZ again in 2006. Because significant time had passed since the nine initial scoping hearings were held in November–December 2003, and given that further stock assessments were now available, NMFS needed additional scoping before finalizing the alternatives to be analyzed in a draft EIS. NMFS developed a preliminary draft analyses of Federal management options to open the EEZ to the harvest of Atlantic Striped Bass (Options Paper), which included the 2005 stock assessment. This document was published in the **Federal Register** on April 24, 2006 (71 FR 20984) with a

30-day comment period. The comment period was extended an additional 30 days and ended June 26, 2006. Options considered in the document were: (1) Open the entire EEZ, implement a 28–inch (71.1–cm) minimum size limit, and allow states to adopt more restrictive regulations for fishermen and vessels licensed in their state (Commission recommendation); (2) open the entire EEZ, implement a 28–inch (71.1–cm) minimum size limit, allow states to adopt more restrictive regulations for fishermen and vessels licensed in their state, implement a recreational bag limit of 2 fish per day, require circle hooks for all commercial and recreational hook and line fishing using bait, and commercial trip limits (option a) bycatch trip limit options (option b); (3) open the entire EEZ, implement a 28–inch (71.1–cm) minimum size limit, allow states to adopt more restrictive regulations for fishermen and vessels licensed in their state, allow hook and line gear only, implement a recreational bag limit of 2 fish per day, require circle hooks for all commercial and recreational hook and line fishing using bait, and implement a commercial trip limit of 30 fish per trip or day whichever is greater; and (4) status quo. No preferred option was identified.

Most public comments were based on review of the Options Paper, which analyzed impacts under each of the four options. The Option Paper stated that options 1–3 could result in an increased fishing pressure in the EEZ (i.e., increased mortality), however, any increase in EEZ effort will likely be minimal and offset by an equally small decrease in nearshore effort.

The vast majority (97 percent) of the 8,000–plus comments were for option 4 status quo. Public comments overwhelmingly indicated that the public disagreed with the Option Paper's conclusion that there would be no increase mortality if the EEZ were opened. The public believes that if the EEZ were opened that mortality would increase substantially. In addition, the public believes that ''It has been determined that the majority of striped bass in the EEZ are larger fish, which also tend to be females,'' although, there is no scientific study to substantiate this. Regardless, there exists a strong perception by the public that larger fish are offshore and that perception alone might cause an increase in fishing pressure in the EEZ and, as a result, an overall increase in mortality on the stock.

Discussion

The striped bass stock has shown significant changes since 2003 when the Commission recommended that the Secretary open the EEZ to striped bass fishing in Amendment 6. Although approved in February 2003, Amendment 6 was based largely on data from the 2001 Stock Assessment. Notably, at the time of adoption, the best available science suggested the mortality rate to be stable and below the threshold, and that spawning stock abundance was increasing. Amendment 6 incorporated new management standards to ensure stock conservation including targets and thresholds for both mortality and spawning stock biomass, and five triggers that would allow the Commission to respond quickly to increased mortality. One of the triggers is ''If the Management Board determines that the fishing mortality threshold is exceeded in any year, the Board must adjust the striped bass management program to reduce the fishing mortality rate to a level that is at or below the target within one year.''

The best available science suggests that the stock's status and fishing mortality rate have changed significantly since the time the Commission approved Amendment 6 in February 2003. Not only has the overall trend shifted towards increased mortality, but the specific fishing mortality rate itself has increased from F=0.28 (below the target of 0.30) to F=0.40 a rate that exceeds the target and is almost equal to the overfishing threshold of 0.41. This shift represents a mortality increase of 43% since 2002. In fact, fishing mortality estimates for older striped bass (age 9 F=0.50) and (age 10 F=0.44) both exceed the threshold level. Further, the trend toward increasing female spawning stock biomass (SSB) has reversed itself with the overall biomass decreasing from 60.6 million pounds (according to the science available in February 2003), to 55.0 million pounds in November 2005. The SSB remains well above the target of 38.6 million pounds and threshold of 30.9 million pounds, but has shown a downward trend of 9 percent since 2002.

The analysis in the Options Paper stated that any increase in EEZ effort (increase mortality) under options 1–3 would likely be minimal. But, with the fishing mortality rate at F=0.40, NMFS cannot be certain, especially after taking into account the overwhelming public perception that large trophy sized fish congregate in the EEZ, that opening the EEZ would not increase effort and lead to an increase in mortality that would exceed the threshold. Since the current mortality rate is just below the threshold, any increase will require the Commission to reduce fishing effort on striped bass. Both the Commission's and NMFS' ability to immediately respond to an overfishing and/or overfished situation is a potential issue, particularly given the timeframe within which Amendment 6 was created, and given the lag time in which a given year's data is available to management.

Therefore, NMFS has concluded that it would be imprudent to open the EEZ at this time and has chosen to not proceed with further processing of an EIS under the NEPA process.

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

Dated: September 8, 2006.

Alan D. Risenhoover,

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

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