

**Register** on July 21, 2003 (68 FR 43074). In the ANPR, NMFS announced that it was considering whether to propose rulemaking to revise Federal Atlantic striped bass regulations to be compatible with the Commission's Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass (Amendment 6). Under the Atlantic Striped Bass Conservation Act, NMFS is obligated to regulate striped bass in the EEZ in a manner that is compatible with state management, which is set forth under the Commission's plan. In the ANPR, NMFS sought comments on the Commission's recommendations to the Secretary of Commerce (Secretary) to open the EEZ to the harvest of Atlantic striped bass. NMFS also solicited comments on possible alternative management measures and issues that NMFS should consider relative to these recommendations. The comment period closed on August 20, 2003. The public requested more time to submit comments; NMFS agreed, and reopened the comment period from August 26, 2003, until September 25, 2003 (68 FR 51232).

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 Commission has found that the population has expanded to record levels of abundance.

To maintain this recovered population, the Commission approved Amendment 6 to the ISFMP in February 2003 (copies of Amendment 6 are available via the Commission's website at <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 4 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 during the Amendment 6 process 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.

#### Summary of ANPR Comments

In addition to the Commission's reasons for its recommendation to the Secretary, the following summarizes comments in support of opening the EEZ: (1) Opening the EEZ to the harvest of striped bass will not increase pressure on the resource, but will dissipate effort over a larger area and reduce the congestion by small trawlers and recreational boats in state waters; and (2) enforcement of the EEZ closure is difficult, but state controls at the point of landing work, regardless of where the fish are harvested. Comments in opposition to opening the EEZ are summarized as follows: (1) Opening the EEZ could create conflicts between state and Federal jurisdictions, such as in those states with game fish status; (2) bycatch concerns may be more difficult to address if fishing for striped bass is allowed in the EEZ; (3) fishing for striped bass in the EEZ may result in a directed fishery for the larger, older, more successful breeders assumed to concentrate offshore; (4) fishing for striped bass in the EEZ may result in an