

2. Section 571.105 is amended by revising S5.3.3(b) to read as follows:

§ 571.105 Standard No. 105; Hydraulic and electric brake systems.

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S5.3.3 (a) * * *

(b) For vehicles manufactured on and after September 1, 1999 with GVWRs greater than 10,000 lbs, each message about the existence of a malfunction, as described in S5.3.1(c), shall be stored in the antilock brake system after the ignition switch is turned to the "off" position and the indicator lamp shall be automatically reactivated when the ignition switch is again turned to the "on" position. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the "on" (run) position. The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a malfunction that existed when the key switch was last turned to the "off" position.

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Issued on: February 23, 1999.

Ricardo Martinez,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 990119023-9023-01; I.D. 111898B]

RIN 0648-AL38

Atlantic Sturgeon Fishery; Moratorium in Exclusive Economic Zone

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

ACTION: Direct final rule; request for comments.

SUMMARY: NMFS issues this direct final rule prohibiting the possession in, or harvest from, the exclusive economic zone (EEZ) of Atlantic sturgeon from Maine through Florida. The intent of the rule is to provide protection for the overfished stock of Atlantic sturgeon, to ensure the effectiveness of state regulations, and to aid in the rebuilding of the stock.

DATES: This rule is effective May 27, 1999 without further action, unless an adverse comment or a notice of intent to

submit an adverse comment is received by March 29, 1999. If an adverse comment or a notice of intent is received, the NMFS will publish a timely withdrawal of the rule in the *Federal Register*.

ADDRESSES: Comments on the direct final rule should be sent to, and copies of supporting documents, including an Environmental Assessment/Regulatory Impact Review, are available from Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, National Marine Fisheries Service, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Paul Perra, 301-427-2014.

SUPPLEMENTARY INFORMATION:

Background

Section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C. 5101 *et seq.*, states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce (Secretary) may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nautical miles. These regulations must be (1) necessary to support the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Atlantic States Marine Fisheries Commission (Commission) and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act (16 U.S.C. 1851).

Historically, Atlantic sturgeon were managed by individual states until 1989 when the Commission adopted an Atlantic Sturgeon ISFMP (Atlantic Sturgeon Plan) in response to low levels of Atlantic sturgeon. The Commission approved and implemented Amendment 1 to its Atlantic Sturgeon Plan on June 11, 1998. Amendment 1 proposed to restore Atlantic sturgeon spawning stocks to population levels that will provide for sustainable fisheries. Its primary objective is to establish 20 protected year classes in each and every spawning stock, which should eventually allow for controlled commercial harvests on self-sustaining spawning stocks. Amendment 1 mandates that all Atlantic coastal jurisdictions close their Atlantic sturgeon fisheries, implement a stock monitoring program, adhere to stocking and aquaculture guidelines, and establish a means for tracking

importation of foreign Atlantic sturgeon products.

All Atlantic coastal marine fisheries jurisdictions closed their Atlantic sturgeon fisheries prior to the passage of Amendment 1. Amendment 1 mandates that these closures remain in place until the Commission determines that the stocks have recovered. Because of the species' life history (7 to 30 years for females to reach maturity) and depletion of Atlantic sturgeon stocks, the Commission believes the Atlantic sturgeon recovery will take about 41 years. Jurisdictions that do not comply with Amendment 1 could face federally imposed closures on their fisheries under section 807(c) of the ACFCMA. In addition, Amendment 1 requests that the Secretary prohibit the possession of Atlantic sturgeon in the EEZ, and monitor bycatch of Atlantic sturgeon in the dogfish and monkfish fisheries and, if such bycatch is excessive, implement measures to reduce the bycatch.

To support the Commission's Atlantic sturgeon conservation efforts under Amendment 1, Federal regulations are needed in the EEZ to provide protection for Atlantic sturgeon in Federal waters, and to close loopholes in state landing laws that would exist without the Federal regulations. No Federal regulations currently exist to control Atlantic sturgeon fishing in the EEZ. Therefore, while no landing of the species would be allowed in Atlantic coastal jurisdictions, it can be taken in the EEZ, where it can be legally killed, consumed, or shipped to a non-Atlantic coastal jurisdiction for sale. Atlantic sturgeon products, especially eggs sold as caviar, bring a high price, i.e., about \$50 per pound, to fishermen. Therefore, law enforcement efforts to maintain closed fisheries are a very important part of the management for this species. A Federal regulation in the EEZ to prohibit possession of Atlantic sturgeon will improve the ability of state law enforcement agencies to enforce their own Atlantic sturgeon state closures. Furthermore, a Federal prohibition on possession should close any "loopholes" in state laws if persons take Atlantic sturgeon in the EEZ and attempt to land them in states. This rule should deter poaching of Atlantic sturgeon in the EEZ by imposing Federal penalties, which are generally stricter than state penalties, on individuals who do not comply with the EEZ closure.

The U.S. Department of Commerce's National Marine Fisheries Service and U.S. Department of the Interior's Fish and Wildlife Service have recently conducted an Endangered Species Status Review (Status Review) of the

species in response to a Listing Petition received in 1997. The results of that review have determined that the species does not warrant listing as threatened or endangered under the Endangered Species Act at this time.

Purpose

Atlantic sturgeon have been directly harvested utilizing various gears including gill nets, traps, pound nets, otter trawls, harpoons, trammel nets, weirs, stake row nets, and seines. The Commission's Atlantic Sturgeon Plan stated that recreational hook-and-line fishing in the United States is insignificant, but noted an emerging directed sport fishery for Atlantic sturgeon in the Canadian Maritimes. However, there is no evidence that a recreational fishery ever developed in the United States for Atlantic sturgeon. Many authors have cited over-harvesting as the single major cause of the precipitous decline in abundance of Atlantic sturgeon.

Directed Harvest

At one time, fisheries for sturgeon were concentrated during the spawning migration in every major coastal river along the Atlantic Coast. By 1860, commercial fisheries were established coastwide in Delaware, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, and Virginia. Records of landings were first kept in 1880, when the U.S. Fisheries Commission started compiling statistical information on commercial fishing landings. Harvest in these early years was heavy, and approximately 3,350 mt (7.4 million lb) were landed in 1890. The majority of the fishery for a 50-year time period (from 1870 to 1920) was conducted on the Delaware River and in the Chesapeake Bay System, with New Jersey and Delaware reporting the greatest landings. Landings reported until 1967 likely included both Atlantic and shortnose sturgeon. Shortnose sturgeon were granted Federal protection in 1967, and, therefore, harvest became illegal in subsequent years. During the 1970's, the average catch was approximately 68 mt (150,000 lb) per year, and, in the 1980's, the average catch was approximately 56.7 mt (125,000 lb) per year. By the 1980's, the focus of fishing effort shifted to South Carolina, North Carolina, and Georgia, which accounted for nearly 80 percent of the total U.S. landings. Catch between 1990 and 1996 was centered in the Hudson River and coastal New York and New Jersey. In 1990 and 1991, the average catch was approximately 90.7 mt (200,000 lb) per year. Since 1991, the

catch has declined yearly to a low of 0.38 mt (843 lb) in 1997.

In a March, 1998, Stock Status Review, the Commission indicated that the Atlantic sturgeon spawning stocks of the entire Atlantic Coast are severely overfished, that, in some cases, they may have been extirpated (Connecticut River in New England and St. Johns River in Florida), and that fishing mortality had significantly contributed to the decline of the stocks. Little coast-wide information is available on the populations and survival of young Atlantic sturgeon. However, there are some spawning stocks in which reproduction appears to be occurring (Hudson River, NY; Delaware River, DE and NJ; James and possibly York Rivers, VA; Roanoke and Cape Fear Rivers, NC; Waccamaw, Santee, Ashepoo, Combahee, Edisto, Savannah and possibly Cooper Rivers, SC; and Savannah and Altamaha Rivers, GA). Also, a few south Atlantic river systems, which have had closed Atlantic sturgeon fisheries for a number of years, appear to be experiencing some rebuilding of juvenile populations.

Bycatch

The Stock Status Review also found that the known bycatch of Atlantic sturgeon is not a significant threat to the stocks. However, because any mortality may slow the recovery period for the species, each Atlantic coast state should carry out monitoring programs for Atlantic sturgeon bycatch to insure that the magnitude and effects of bycatch can be determined.

The direct final rule would prohibit the harvest (catch and retention) of Atlantic sturgeon from the Atlantic coast EEZ. The rule provides the strongest possible conservation measure under the ACFCMA, is easy to understand and enforce, and is in the best long-term economic interests of both commercial and recreational fishermen. It eliminates any claim that Atlantic sturgeon were caught in the EEZ, when fishermen might otherwise have caught fish illegally in state waters. Enforcement of the prohibition is straightforward because possession of Atlantic sturgeon on board a vessel in the EEZ would be a violation of the regulation. The prohibition also includes possession of Atlantic sturgeon taken as incidental catch (bycatch) while fishing for other species, since such bycatch must be released to the water as soon as possible. It allows for the development of a stock rebuilding program and, therefore, for the resumption of the fishery in the future.

NMFS believes that this direct final rule is compatible with the

Commission's efforts to protect Atlantic sturgeon in state waters. Under Amendment 1 to the Atlantic Sturgeon Plan, Atlantic sturgeon may not be landed in any of the Atlantic Coastal states, and the Commission anticipates a 41-year rebuilding program. This direct final rule would prohibit the possession in or the harvest from the EEZ of Atlantic sturgeon from Maine through Florida.

Classification

This rule is consistent with section 5103b of the Atlantic Coastal Fisheries Cooperative Management Act.

Under the authority of 5 U.S.C. 553(b)(B), NMFS is waiving the requirement to provide prior notice and an opportunity for public comment as these procedures are unnecessary. All Atlantic Coastal states through the Commission's Amendment 1 to the Atlantic Sturgeon Plan have closed their Atlantic sturgeon fisheries as of June 11, 1998, and anticipate a 41-year closure. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause for waiving prior notice and an opportunity for public comment. NMFS believes this action is non-controversial and does not expect to receive any comments. However, should NMFS receive an adverse comment or a notice of intent to submit an adverse comment, NMFS will withdraw this rule and issue a proposed rule with an opportunity for public comment.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The direct final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing, Intergovernmental relations.

Dated: February 22, 1998.

Andrew A. Rosenberg, Ph.D.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter VI, part 697, is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for 50 CFR part 697 continues to read as follows:

Authority: 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.* 2. In § 697.2, the definition for "Directed fishery" is removed, the definition for "Retain" is revised, and the definitions

for "Atlantic sturgeon," "Natural Atlantic sturgeon," and "Stocked Atlantic sturgeon," are added in alphabetical order to read as follows:

§ 697.2 Definitions.

* * * * *

Atlantic sturgeon means members of stocks or populations of the species *Acipenser oxyrinchus*.

* * * * *

Natural Atlantic sturgeon means any Atlantic sturgeon that is not the result of a commercial aquaculture operation, and includes any naturally occurring Atlantic sturgeon (those Atlantic sturgeon naturally spawned and grown in rivers and ocean waters of the Atlantic Coast).

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Retain means to fail to return any species specified under § 697.7 of this chapter to the sea immediately after the hook has been removed or after the species has otherwise been released from the capture gear.

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Stocked Atlantic sturgeon means any Atlantic sturgeon cultured in a hatchery that is placed in rivers and ocean waters of the Atlantic Coast to enhance the Atlantic sturgeon spawning stocks.

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3. In § 697.7, paragraph (d) is added to read as follows:

§ 697.7 Prohibitions.

* * * * *

(d) *Atlantic sturgeon fishery*. In addition to the prohibitions set forth in § 600.725, the following prohibitions apply. It is unlawful for any person to do any of the following:

(1) Fish for Atlantic sturgeon in the EEZ.

(2) Harvest any Atlantic sturgeon from the EEZ.

(3) Possess any natural or stocked Atlantic sturgeon in or from the EEZ.

(4) Retain any Atlantic sturgeon taken in or from the EEZ.

(5) Possess any natural Atlantic sturgeon parts, including Atlantic sturgeon eggs, in the EEZ.

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