

to a decision and to ensure an opportunity for public comment on as complete an administrative record as possible, the deadline for final action on this proposal is being extended and the comment period reopened" (60 FR 13105).

In the July 10, 1996, Order of United States District Court for the Western District of Texas ("July 10 Order"), the court found that, "the extension was not valid because an extension under the ESA can only be granted by the Secretary based on a finding that there is substantial disagreement regarding the sufficiency and accuracy of the available data upon which the listing decision is to be made." Specifically, the court found that the need to consider a report by the Barton Springs/Edwards Aquifer Conservation District did not justify the extension. The court found that "Congress determined that there must be substantial scientific disagreement in order to warrant an extension * * *." However, the Act indicates "substantial disagreement" is necessary for a six month extension to be appropriate and does not specify that disagreement must be scientific. In that the inadequacy of existing regulatory mechanisms is one of the five elements which the Service must consider in determining whether to list a species, 16 U.S.C. 1533(a)(1)(D), the Service believes that substantial disagreement concerning this aspect of the listing decision constitutes a valid basis for a six month extension since data regarding that element is "relevant to the determination * * * concerned * * *." 16 U.S.C. 1533(b)(6)(B)(i).

The court ordered the Secretary to make a decision whether to list the salamander as endangered, withdraw the listing, or extend the time to make a decision by no more than six months. The Secretary now finds that there exists substantial disagreement regarding the sufficiency or accuracy of the data regarding the inadequacy of existing regulatory mechanisms upon which the listing decision is to be made.

The court anticipated the possibility that the Secretary might opt for a six month extension and specified a method by which the six months should be calculated for the purposes of this listing. The court instructed the Secretary that in the event such an extension was deemed warranted, that, "the six month period began on February 17, 1995, (the date upon which the Secretary was to make some determination) and continues until April 10, 1995 (the starting date of the moratorium—54 days). The six month period commenced again on April 26, 1996, when the President waived the

budget moratorium. Therefore, the six month extension, if invoked, expires on August 30, 1996" July 10 Order at 7. Since the Southwest Region identified processing the final determination for the Barton Springs salamander as its highest priority under the listing priority guidance (61 FR 24722; May 16, 1996), the Service intends to issue a final determination by August 30, 1996.

Section 4(b)(6)(I) of the Act indicates that the Secretary may extend the one year period following proposal for six months "for purposes of soliciting additional data." The Service is unable to solicit additional data at this time since the court has ordered the comment period, which the Service reopened on June 24, 1996 (61 FR 32413), closed effective July 10, 1996, the date of its order. At the time the Service reopened the comment period, however, it justified that action by noting the need to obtain additional information on "proposed regulatory protection under State authorities including water quality protection zones, nonpoint source pollution programs, monitoring, and Edwards Aquifer-specific actions * * *." To evaluate effectively whether the existing regulatory structure may adequately protect the species, the Service must obtain further information on these developments" (61 FR 32414). The Service also reprinted two letters, one from the Texas Natural Resources Conservation Commission and one from Valarie Bristol, Travis County Commissioner, requesting the comment period be reopened and noting regulatory initiatives concerning which information should be gathered. In the notice reopening the comment period, the Service advised interested parties to submit any information as soon as possible because the comment period might be closed by the courts without advance notice. As described previously, the U.S. District Court for the Western District of Texas did order the comment period closed on July 10, 1996. However, during the two weeks the comment period was open, the Service received five comment letters, including comments from three Texas state regulatory agencies. Three of these comments referred specifically to the adequacy of existing regulatory mechanisms. Therefore, while the Service will not be able to seek additional information subsequent to the finding the Secretary makes today, the Service believes the public was given an opportunity to provide additional information in the very recent past. During the next several weeks, the information received during

the comment period will be analyzed and the comments responded to in the final decision document, thus fulfilling the goal of the six month extension and assuring that the Service will appropriately evaluate the five factors provided in section 4 of the Act. Such consideration would not be possible if the Service were to make a final decision regarding the proposal to list the Barton Springs salamander as endangered by July 23, 1996, as required by the July 10 Order in the absence of a six month extension.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 18, 1996.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 071296D]

International Code of Conduct for Responsible Fisheries: Draft Implementation Plan

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of the Draft Implementation Plan for the Code of Conduct for Responsible Fisheries (Code) and is requesting comments from the public. The Code was negotiated under the sponsorship of the Food and Agriculture Organization of the United Nations (FAO) as an effort to promote international understanding about the responsible conduct of fishing and related activities. The intended effect of the Implementation Plan is to assess relevant U.S. policy and practices in relation to the standards set forth in the Code and, within the responsibilities of NMFS, to present actions to meet those standards.

DATES: Comments should be submitted on or before September 23, 1996.

ADDRESSES: Comments on the Draft Implementation Plan should be submitted to Dean Swanson, Acting

Director, Office of International Affairs, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the Draft Implementation Plan are available from the NMFS Office of International Affairs.

FOR FURTHER INFORMATION CONTACT: Dean Swanson, 301-713-2276.

SUPPLEMENTARY INFORMATION: The concept of responsible fisheries was raised by the FAO in 1991 at the 19th Session of the FAO Committee on Fisheries (COFI). COFI recognized that FAO has an important role to play in promoting international understanding about the responsible conduct of fishing organizations.

In May 1992, the Government of Mexico, in consultation with FAO, organized the International Conference on Responsible Fishing, which resulted in the Cancun Declaration. The Conference requested FAO to draft the Code in consultation with other international organizations.

At its 20th session, in 1993, COFI considered the contents of the proposed code and agreed that it should contain an introductory section, including general principles, and six thematic areas or articles: Fisheries management, fishing operations, aquaculture development, integration of fisheries into coastal area management, post-harvest practices and trade, and fisheries research. The Agreement to Promote Compliance with International Conservation and Management Measures by Fish Vessels on the High Seas (the Compliance Agreement) was to form an integral part of the code.

Beginning in February 1994 and continuing through September 1995, FAO convened an informal working group of government-nominated experts, a technical consultation, and two sessions of a technical committee to

elaborate the Code. In October 1995, the Code was submitted to the FAO Council and adopted by the FAO Conference in November 1995.

Although the Code is a voluntary, non-binding instrument, it addresses aspects of responsible fisheries that are included in two recently concluded international agreements: The Compliance Agreement and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Straddling Stocks Agreement). The United States has signed both international agreements and deposited an instrument of acceptance for the Compliance Agreement.

The Compliance Agreement sets forth a broad range of obligations for nations that have fishing vessels operating on the high seas, including the obligation to ensure that such vessels do not undermine international fishery conservation and management measures. Such nations must also prohibit their vessels from fishing on the high seas without specific authorization and must take enforcement measures in respect to vessels that contravene requirements associated with the Compliance Agreement. The Compliance Agreement is considered to be an integral part of the Code. The United States has implemented the Compliance Agreement through the High Seas Fishing Compliance Act of 1995.

The Straddling Stocks Agreement includes an article on general principles that is similar in content and wording to the article on general principles in the Code. These issues include the

precautionary approach to fisheries management; the impacts of fishing on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks; the minimization of pollution, waste, discards, catch by lost or abandoned gear, and the catch of non-target species; and the prevention or elimination of overfishing and excess fishing capacity. The Straddling Stocks Agreement, while generally limited to straddling stocks and highly migratory fish stocks, is applicable to fishing within national exclusive economic zones for purposes of Article 6 (application of the precautionary approach), Article 7 (compatibility of conservation and management measures) and, *mutatis mutandis*, to Article 5 (general principles).

The Draft Implementation Plan for the Code is organized as follows:

Section I. Actions to be initiated during Fiscal Year (FY) 1997-98.

Section II. Actions to be initiated after FY 98.

Section III. Standards under policy review within the U.S. Government.

Section IV. Standards that are the responsibility of a Federal Agency other than the National Marine Fisheries Service.

Appendix A. Standards that do not require the United States to initiate new action.

Appendix B. Standards that do not apply to the United States.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 22, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

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