to threatened species all prohibitions provided for endangered species under section 9(a) of the Act.

Pursuant to section 4(d) of the Act and 50 CFR 17.31(c), the Services propose to define the conditions under which the incidental take of Atlantic salmon resulting from activities regulated by State and local governments would not violate section 9 of the Act. Under the special rule, incidental take of Atlantic salmon when conducting otherwise lawful activities addressed in an Atlantic salmon conservation plan prepared by the State of Maine and approved by the Services, would not be considered a violation of section 9 of the Act, provided the Services determine that such a plan is consistent with the criteria for an "incidental take" permit pursuant to section 10(a)(2)(B) of the Act, 50 CFR 17.32(b)(2), and 50 CFR 222.22(c)(2).

The intent of the special rule is to provide the State of Maine an opportunity to maintain the lead role in the management of activities that could impact Atlantic salmon in the DPS. The Services are encouraging the State to identify such activities and include them in a conservation plan to be submitted to the Services any time after the publication of this notice. Once the plan is received, the Services will publish a notice of availability and accept public comments on that plan. The Services will consider public comments and the criteria outlined in this section to determine whether the plan will reduce threats and promote the conservation of Atlantic salmon in the DPS. The Services will work closely with Maine officials to revise or strengthen sections of the plan as may be necessary prior to plan approval.

The Services recommend that the Atlantic salmon conservation plan contain, but not be limited to, the following sections—(1) a discussion of the lawful activities having the potential to incidentally take Atlantic salmon, (2) activities such as recreational fishing targeting species other than Atlantic salmon, habitat modification, and aquaculture, and (3) the potential impacts to the DPS and provisions to minimize those impacts.

Using recreational fishing as an example, the State could identify various ongoing fishing activities in the seven rivers (bass, trout, etc.) and the likelihood of each to incidentally catch an Atlantic salmon adult or juvenile. The plan would address the time of year of each fishery, location, and gear used. The plan should identify acceptable levels of incidental take, measures that will be implemented to monitor incidental take, and measures to further

restrict the fishing activity should such take exceed that allowed. State law enforcement activities to protect Atlantic salmon in the seven rivers should be identified. In addition, the plan should include outreach activities that will be conducted to enlist angler support and educate anglers on the proper method for releasing incidentally caught Atlantic salmon.

If aquaculture is included in the plan, then the plan should include an evaluation of the potential for incidental take to occur. A take could result, for example, from the interbreeding of escaped net-pen reared salmon and DPS salmon, the transfer of disease, or the disruption of wild redds. An assessment of the likelihood of interaction should include information on past escapement of Atlantic salmon either from cages or hatcheries, and any documentation as to the presence of the aquaculture fish in the seven rivers identified. Measures that will be required by the State to minimize interactions between DPS and net-pen reared Atlantic salmon should be identified and could include such provisions as cage monitoring and reporting of escapees and the subsequent monitoring of rivers, improved cage design, placement of weirs in the seven rivers, disease certification, siting constraints, broodstock selection, sterilization, marking of net-pen fish, and law enforcement activities.

Although the Status Review does not identify habitat modification in the seven rivers in the DPS as a major threat to Atlantic salmon, the State prepared conservation plan should discuss state authorized activities that could potentially modify habitat and incidentally take Atlantic salmon. This discussion should address impacts of water withdrawals and land use practices on spawning habitat, along with State efforts, both existing and planned, to reduce such impacts. This section might include a brief summary of existing regulations, permit review procedures, water quality monitoring activities, public outreach activities, and voluntary landowner efforts such as Project SHARE, which focus on habitat protection and improvement. Finally, the plan should include provisions for identifying and correcting any situations which are likely to be causing incidental take and monitoring the effects of such corrective actions. The conservation of the DPS must be the basis for all provisions of the plan.

The standards the Services will use to evaluate the State plan are consistent with those set forth in 50 CFR 17.32(b)(2) and 50 CFR 222.22(c)(2), which define the issuance criteria for

obtaining a permit to incidentally take listed wildlife species under section 10(a)(1)(B) of the Act. The six criteria are:

(1) Any taking will be incidental to otherwise lawful activities and not the purpose of such activities. Any taking of Atlantic salmon in the seven rivers as described in the plan would have to occur inadvertently while conducting an activity whose purpose was not to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect Atlantic salmon from the seven river populations. The taking must not be deliberate and purposeful. The plan must include an analysis of alternatives that would not result in take and an explanation of why these are not being used. The plan should include the State regulations that govern these fisheries as well as information on how those regulations are promulgated, enforced, and modified.

(2) The plan should, to the maximum extent practicable, minimize and mitigate the impacts of any proposed incidental take. Compliance with this standard involves a planning strategy that emphasizes avoidance of impacts to Atlantic salmon, provides measures to minimize potential impacts by modifying practices (e.g. in the case of aquaculture it could include improved cage design, increased monitoring and reporting of escapees, etc.), and details compensation measures needed to offset unavoidable impacts (e.g., weirs or other means to recapture escapees).

(3) The plan should be adequately funded and contain provisions to deal with unforeseen circumstances. A summary of the funding that will be available to implement provisions of the plan, including enforcement and monitoring, should be provided. The plan should outline how it will be determined that there is an unforeseen problem and should include the specific steps that will be taken to correct that problem.

(4) Any taking allowed under the plan should not appreciably reduce the likelihood of survival and recovery of Atlantic salmon in the wild. This criterion is equivalent to the regulatory definition of "jeopardy" under section 7(a)(2) of the Act and means to engage in any activity that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of the DPS. In the case of incidental catch of Atlantic salmon, the plan must include an assessment of the potential for Atlantic salmon to be incidentally caught by anglers targeting other species, the likelihood of mortality to the Atlantic salmon that is caught and