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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 697

[Docket No. 030617155-3155-01; I.D. 051903D]

RIN 0648-AR11

#### Atlantic Coastal Fisheries Cooperative Management Act Provisions; Weakfish Fishery

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to: increase the incidental catch allowance for weakfish caught in the Exclusive Economic Zone (EEZ) from 150 lb (67 kg) to no more than 300 lb (135 kg) per day or trip, whichever is longer in duration; remove Massachusetts and Connecticut from the list of states where commercially caught weakfish from the EEZ can be landed; and add to our regulations the Director, Office of Sustainable Fisheries, as an official who can grant Exempted Fishing Permits. The intent of this proposed rule is to modify regulations for the Atlantic coast stock of weakfish to promote the effectiveness of the Commission's Interstate Fishery Management Plan (ISFMP) for weakfish.

**DATES:** Written comments must be received on or before July 31, 2003.

**ADDRESSES:** Comments on the proposed rule should be sent to, and copies of a Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), are available from, Anne Lange, Chief, State-Federal Fisheries Division (SF8), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Suite 13317, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Tom Meyer, 301-713-2334.

**SUPPLEMENTARY INFORMATION:**

## Background

NMFS is proposing to modify weakfish conservation measures in the EEZ under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5101 *et seq.*, which 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 nm offshore. These regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission, and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

On November 21, 2002, the Commission approved and implemented Amendment 4 to the ISFMP for Weakfish (Amendment 4). Under Amendment 4, vessels fishing for weakfish must use mesh sizes of at least 3¼-inch (8.3 cm) square stretch mesh or 3¾-inch (9.5 cm) diamond stretch mesh for trawls and 2⅞-inch (7.3 cm) stretch mesh for gillnets. Vessels using smaller mesh sizes cannot target weakfish, but often take this species as bycatch (i.e. non-directed fisheries). During development of Amendment 4, some states expressed concern that increased numbers of weakfish are being discarded as bycatch in these non-directed fisheries. Although research on discard mortality for weakfish is not available, fishermen have indicated that most discards are dead, and therefore, discard mortality has been assumed to be 100 percent. To address this concern, Amendment 4 provides that states may allow fishermen targeting species other than weakfish to possess up to 300 lb (135 kg) of weakfish in any one day or trip, whichever is the longer period of time, as incidental catch in state waters, provided that there is at least an equal poundage of other species on board the vessel. This is an increase of 150 lb (67 kg) from the Amendment 3 incidental weakfish catch allowance of 150 lb (67 kg). Any state that chooses to implement a 300-lb (135-kg) allowance must have a reporting system in place that will allow adequate quantification of any such catch. State management plans must also account for any harvest of weakfish from non-directed fisheries. The required reporting systems will provide information on weakfish

bycatch that will be needed by the Commission and NMFS in developing future regulations. Such information is currently limited. The Commission believes that this increase in allowance will contribute little to total landings, while the required reporting systems will result in improved data for future stock assessments

## Status of the Weakfish Fishery

Amendment 4 incorporates results of the most recent weakfish stock assessments, developed by the Atlantic Coastal States, the Commission, and NMFS (Section 1.2.2 of Amendment 4). The 30th Northeast Regional Stock Assessment Workshop, in 2000, reviewed the weakfish stock assessment and concluded that weakfish were at a high level of abundance and subject to low fishing mortality rates. The assessment was subsequently updated, in 2002, with data through 2000. Spawning stock biomass has been building since 1993, and is currently well above the threshold of 31.8 million lb (14,400 MT). Estimates of fishing mortality, which reached a high in 1994 of 2.52, have been below 0.50, since 1995. The 2000 estimate is below the fishing mortality target of 0.31 and far below the fishing mortality threshold of 0.50.

Management measures implemented under Amendment 3 resulted in an increase in the size and age structure of the weakfish population. The estimate of the proportion of age 6+ fish had shrunk to only 0.3 percent of the total number of weakfish in 1990. This proportion has been increasing in recent years, reaching 6.8 percent of the total number in 2001. Measures implemented under Amendment 4 are designed to continue the expansion of the weakfish age and size structure to that necessary for full restoration of the stock, and to return weakfish to their previous geographic range.

## Recommendation to the Secretary

On March 13, 2003, the Secretary received the following two recommendations from the Commission to implement regulations under the Atlantic Coastal Act: (1) Require that fishermen who harvest weakfish recreationally in the EEZ comply with the laws of the state where they are landed; and (2) allow fishermen in non-directed fisheries using smaller than certain specified mesh sizes to possess no more than 300 lb (135 kg) of weakfish during any one day or trip, whichever is longer in duration (an increase of 150 lb (67 kg) per day or trip). These two recommendations were part of five measures approved under