

Section 4.9 of Amendment 4, but the only two that the Commission believed required changes to the current Federal regulations.

Recommendation 1 would require that fishermen who harvest weakfish recreationally in the EEZ comply with the laws of the state where they are landed. NMFS believes that the current provisions at 50 CFR 697.3(c) ("The regulations in this part do not preempt more restrictive state laws, or state enforcement of more restrictive state laws, with respect to weakfish fishing and American lobster fishing") is compatible with the intent of this recommendation. If a state has a regulation that is more restrictive than the Federal regulation in the EEZ, the Federal regulation would apply in the EEZ but would likely not prohibit the state from enforcing its more restrictive state law upon landing in that state. Therefore, the Commission's recommendation is already in effect and a change to the current regulation is not required.

Recommendation 2 would allow non-directed fisheries using a mesh size less than 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 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 over the current Federal EEZ regulation). The Commission stated in its letter to the Secretary that an increase in weakfish biomass has resulted in greater weakfish discards, and that a 300 lb (135 kg) bycatch allowance will help to reduce dead discards, while not encouraging directed fishing. The Commission believes that this recommendation is compatible with Amendment 4.

Recommendation 2 is essentially a bycatch provision. Bycatch is defined in the Magnuson-Stevens Act as "fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards." In this case, since vessels fishing for weakfish are required to adhere to the minimum mesh sizes described above, vessels using the smaller mesh sizes cannot direct effort on this species. However, since vessels fishing with smaller mesh sizes are likely to encounter weakfish, any weakfish in excess of 300 lb (135 kg), taken by such vessels, would be considered bycatch under this recommendation. In addition, under Amendment 4, vessels fishing with smaller mesh sizes can retain up to the 300 lb (135 kg) weakfish bycatch

allowance in state waters, provided there is at least an equal poundage of other species on board the vessel. The provision for equal or greater poundage of other species is more restrictive than would be implemented in Federal waters. 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. This recommendation requires a change to current Federal regulations.

Another of the five measures approved under Section 4.9 of Amendment 4 was that weakfish commercially harvested in the EEZ be landed in accordance with the landing laws of the state in which they are landed, with the exception that weakfish caught commercially in the EEZ may not be landed in a *de minimis* state. The Commission permits a state to apply for *de minimis* status if, for the previous two years, its combined average commercial and recreational landings (by weight) constitute less than 1 percent of the annual coastwide commercial and recreational landings of weakfish for the same two year period. The Federal definition is compatible. Once *de minimis* status is granted, designated states are relieved of many of the burdens for monitoring weakfish catches, but must submit annual reports to the Weakfish Management Board justifying the continuance of *de minimis* status. This recommendation was not included in the letter from the Commission since this provision is addressed in current regulations.

The Commission found, and the Secretary agrees, that the States of Massachusetts and Connecticut are now *de minimis* states within the definition of the term, and therefore, these states ought to be removed from the list of states where commercially caught weakfish from the EEZ can be landed (see 50 CFR part 697.7(a)(7)). This measure supports the ability of the states to effectively monitor landings.

#### Proposed Action

Pursuant to section 804(a) of the Atlantic Coastal Act, the Secretary has a statutory obligation to support the Commission's Interstate Fishery Management Program. The Commission recently adopted Amendment 4, which is designed to continue the stock recovery seen during the

implementation of Amendment 3, to benefit the ecosystem as well as commercial and recreational fisheries, and to continue to increase the age and size structure of the weakfish population, as well as its geographic range. In furtherance of this plan, the Commission requested Secretarial support in the form of a modification to the current Federal weakfish regulations. The recommended regulatory change would reduce dead discards (bycatch) by increasing the amount of incidental catch that can be landed, but by such a minimal amount that it would not encourage directed fishing. To support the Commission's weakfish management efforts under Amendment 4, NMFS proposes the following regulations that would modify management restrictions in the Federal weakfish fishery in a manner that is compatible with the recommendations made by the Commission. The proposed rule would allow vessels using a mesh size less than 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 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 over the current Federal EEZ regulation). In addition, the States of Massachusetts and Connecticut would be removed from the list of states where weakfish caught in the EEZ for commercial purposes can be landed (§ 697.7(a)(7)).

Two changes would be included in this rulemaking for consistency and ease of reading: (1) Under 50 CFR 697.22—Exempted fishing, the Regional Administrator is the only official who can exempt a person or vessel from the requirements of this part for the conduct of exempted fishing beneficial to the management of weakfish, pursuant to the provisions of 50 CFR 600.745 of this chapter. But, under 50 CFR 600.745, the Director, Office of Sustainable Fisheries has also been delegated this task. For consistency, the Director would be added to 50 CFR 697.22 as an official, along with the Regional Administrator, who can exempt a person or vessel from the requirements of this part; and (2) Atlantic Coastal Act would be added to the definition section at 50 CFR 697.2.

#### Classification

This proposed rule is published under the authority of the Atlantic Coastal Act. Paragraphs (A) and (B) of section 804(b)(1) authorizes the Secretary to implement regulations in the EEZ in the absence of a Magnuson-Stevens Act FMP. Such regulations must be