

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 697**

[Docket No. 030617155–3232–02; 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: Final rule.

SUMMARY: NMFS issues this final rule 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; to remove Connecticut from the list of states where commercially caught weakfish from the EEZ can be landed; and to add to NMFS' regulations the Director, Office of Sustainable Fisheries, as an official who can grant Exempted Fishing Permits. The intent of this final rule is to modify regulations for the Atlantic coast stock of weakfish to promote the effectiveness of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for weakfish.

DATES: Effective November 3, 2003. Copies of supporting documents, including an Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA),

ADDRESSES: 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**

The background and rationale for this final rule were contained in the preamble to the proposed rule, published in the **Federal Register** on July 1, 2003 (68 FR 39048), and are not repeated here. Additional background for this final rule is available and contained in an EA/RIR/FRFA prepared by NMFS. (See **ADDRESSES**).

This final rule allows vessels using a mesh size less than 3 1/4-inch (8.3 cm)

square stretch mesh or 3 3/4-inch (9.5 cm) diamond stretch mesh for trawls and 2 7/8-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)(§ 697.7(a)(4)); removes the State of Connecticut from the list of states where weakfish caught in the EEZ for commercial purposes can be landed (§ 697.7(a)(7)); adds to NMFS' regulations the Director, Office of Sustainable Fisheries, as an official who can grant Exempted Fishing Permits (§ 697.22); and adds Atlantic Coastal Act and Director to the definition section (§ 697.2).

Comments and Responses

There was one comment submitted by a state agency during the comment period.

1. Comment: One state agency that is currently a *de minimis* state under Amendment 4 to the weakfish plan commented that the regulation (§ 697.7(a)(7)) that does not allow landings of weakfish from the EEZ in a *de minimis* state is not enforceable and should be re-considered, because it is impossible to determine where the fish were harvested when a vessel comes to port. As an alternative to this unnecessary rule, the state suggested that it could easily adopt trip limits (300 lb) to ensure that the state does not become a destination for unlawful catches of weakfish.

Response: Although enforcement of the regulation pertaining to a *de minimis* state does create certain challenges, NMFS declines to categorize the regulation as unenforceable. This regulation was implemented in 1997, after the Commission specifically requested that the *de minimis* language be included in the EEZ rule in order to support Commission efforts in state waters. The Commission also requested in 1997 that any enforcement problems raised by this regulation be forwarded to the Commission's Weakfish Management Board (Weakfish Board); none have been. The Commission recommended in 2003 that this regulation remain in place. The present restrictions on commercial landings in a *de minimis* state, therefore, remain the Commission's stated regulatory preference. Given the Commission's stated preference, the lack of information and debate suggesting that an alternative approach is necessary, and NMFS's mandate under the Atlantic Coastal Act to support the Commission's interstate fishery management efforts, NMFS remains committed to the present

Commission approach. However, NMFS notes the state agency may request that the Weakfish Board reconsider the enforcement concerns associated with this regulation. The adoption by any *de minimis* state of a trip limit of 300 lbs (135 kg) could be part of the discussion. NMFS would consider any additional recommendations from the Commission that may arise from such discussions.

Changes from the Proposed Rule

In its comment letter dated July 9, 2003, the Commonwealth of Massachusetts indicated its intention to withdraw itself from *de minimis* status under the current management regime due to the difficulty that state would have in codifying and enforcing its *de minimis* status. The process of withdrawal from *de minimis* status is far less complicated than inclusion into such a category. The state would upon approval of the withdrawal be expected to comply with all regulatory responsibilities of the plan, whereas it would be exempted from some responsibilities as a *de minimis* state. On July 16, 2003, the Commonwealth of Massachusetts requested that the Commission remove them from *de minimis* state status. On August 29, 2003, the Weakfish Board recommended and the Commission agreed to withdraw their finding that Massachusetts be given *de minimis* status. Under either status — that is, as a *de minimis* state or not — the actions of Massachusetts are not expected to contribute significantly to the Commission's coastwide conservation program for the species. Accordingly, NMFS is able to support the Commission's change on this matter and add the Commonwealth of Massachusetts to the list of states where commercially caught weakfish from the EEZ can be landed in the final rule at 50 CFR 697.7(a)(7) because it is no longer considered *de minimis*.

In the proposed rule, the term Director was added as an official who can grant Exempted Fishing Permits, but the term Director was not defined. This final rule adds the term Director to the definition section (§ 697.2), and defines it as the Director, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910.

Classification

This final 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 compatible with the effective implementation of a Commission's