

The directed fishery closure remains in effect through December 31, 1995.

Classification

This action is required by 50 CFR 630.25(a) and is exempt from review under E.O. 12866.

Dated: November 20, 1995.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-28875 Filed 11-21-95; 4:45 pm]

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50 CFR Part 697

[Docket No. 950605148-5261-02; I.D. 060195C]

RIN 0648-AH58

Atlantic Coast Weakfish Fishery; Moratorium in Exclusive Economic Zone (EEZ)

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule prohibiting the possession in or harvest from the exclusive economic zone (EEZ) of Atlantic coast weakfish (weakfish) from Maine through Florida. The intent of the rule is to provide protection for the overfished stock of weakfish, to ensure the effectiveness of state regulations, and to aid in the rebuilding of the stock.

EFFECTIVE DATE: December 21, 1995.

ADDRESSES: The Final Environmental Impact Statement/Regulatory Impact Review prepared for this rule is available from William Hogarth, 301-713-2339 or NMFS, F/CM3, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: William Hogarth, 301-713-2339.

SUPPLEMENTARY INFORMATION:

Background

The background and rationale for this rule were contained in the preamble to the proposed rule (60 FR 32130, June 20, 1995) and are not repeated here.

Comments and Responses

NMFS held 9 public hearing to gather public comments on the proposed rule and the Draft Environmental Impact Statement and Draft Regulatory Impact Review (DEIS/RIR) documents. The hearings were held on the following dates at the below listed localities:

Morehead City, North Carolina 7/10/95

Fall River, Massachusetts 7/10/95

Manteo, North Carolina 7/12/95

Setauket, New York 7/12/95

Salisbury, Maryland 7/12/95

Cape May Court House, New Jersey 7/12/95

Mayport, Florida 7/13/95

Newport News, Virginia 7/17/95

Dover, Delaware 7/18/95

A total of 226 individuals attended the hearings. Most of the individuals commenting at the hearings from Massachusetts through New Jersey were in favor of the rule. Some of the individuals at the Setauket, New York hearing wanted a 16-inch size limit. One person at the Cape May, New Jersey hearing opposed the rule as proposed. Commenters at the Salisbury, Maryland hearing were in favor of some Federal action, but not necessarily the preferred alternative. At the Newport News, Virginia hearing, a number of individuals were for or against the rule. In North Carolina, there was strong opposition against the rule at the Manteo hearing, and an equal number of comments for and against the rule at the Morehead City hearing. At the Florida hearing, most individuals commented on a recent ban on commercial net fishing imposed by the state.

Written comments were received from the following states and organizations: The Atlantic States Marine Fisheries Commission (Commission); New England, Mid-Atlantic and South Atlantic Regional Fishery Management Councils; U.S. Fish and Wildlife Service; U.S. Environmental Protection Agency (EPA); Delaware Division of Fish and Wildlife; New York State Department of Environmental Conservation Division of Marine Resources; Commonwealth of Massachusetts Division of Marine Fisheries; North Carolina Division of Marine Fisheries; Georgia Department of Natural Resources; North Carolina Fisheries Association, Inc.; Center for Marine Conservation; Salt Water Sportsman; Chesapeake Bay Foundation; Shelter Rock Rifle and Pistol Club; Atlantic Coast Conservation Association of Virginia; National Audubon Society Living Oceans Program; American Sportfishing Association; Maryland Saltwater Sportfishermen's Association, Inc.; Huntington Anglers Club; Virginia Citizens Coalition-Good Government; Imperial Sportsmen's Club, Inc.; Bay Shore Tuna Club; Oakdale Sportsmans Club; Virginia Anglers Club; Suffolk County Senior Citizens Fishing Club; East Islip Anglers and Boating Association, Inc.; and the New York

Sportfishing Federation. Of the states and organizations that submitted written comments, all support the proposal except the State of North Carolina and the North Carolina Fisheries Association. The Georgia Department of Natural Resources and the U.S. EPA both supported the proposal and recommended changes and/or clarifications that are addressed in this document.

In addition, written comments were received from 645 individuals from Virginia; 16 from North Carolina; 56 from Maryland; 8 from Delaware; 6 from Pennsylvania; 5 from New York; 5 from New Jersey; and one each from West Virginia, the District of Columbia, South Carolina, Indiana and Michigan for a total of 746 individuals of which 740 supported and 6 opposed the proposed rule.

In summarizing comments, it was difficult to differentiate between comments addressing the proposed rule, the DEIS/RIR, or both. Therefore, comments and responses on the two documents are listed together. A more detailed description of comments and NMFS responses is included in the Final Environmental Impact Statement and Regulatory Impact Review (FEIS/RIR) published by EPA in the Federal Register on October 6, 1995.

1. *Comment:* NMFS should be commended for taking actions to protect the declining weakfish fishery. The preferred alternative, to prohibit the harvest and possession of weakfish in the EEZ, seems appropriate since it is easy to understand and enforce. Why was the exemption for the possession of weakfish in the Block Island Sound area included? The FEIS/RIR should include an explanation for the Block Island exemption.

Response: The exemption in the DEIS/RIR was to allow fishermen from Block Island, Rhode Island, to transport weakfish through the EEZ to land at ports in Rhode Island. Currently, there are few weakfish landings from the Block Island Sound area, and comments received from the States of Massachusetts and Rhode Island agreed with your comment that the exemption should not be implemented. NMFS concurs and the exemption is deleted in the FEIS/RIR.

2. *Comment:* Several commenters called into question the findings on the status of the weakfish stock, contending that the DEIS/RIR used inaccurate assumptions, and/or did not include 1994 data.

Response: The 1994 data were not available when the DEIS/RIR was drafted. NMFS extended the comment period and during the extension worked

through the Commission to obtain the 1994 data. Since publishing the DEIS/RIR, 1994 data and a preliminary stock assessment analysis have been made available to NMFS by the Commission's weakfish stock assessment scientists. NMFS is satisfied that the assumptions used in the stock assessment are valid. Analysis of the 1994 data has shown that there has been some reduction in fishing mortality, but the mortality rate is still too high to allow rebuilding, and the stock is expected to decline unless further conservation measures are taken. NMFS still finds the weakfish stock severely overfished and in need of the conservation measures in this rule.

3. *Comment:* Under 50 CFR part 602, a Federal fishery management plan must specify a point in time by which an overfished stock must be rebuilt. A rebuilding schedule should be established for weakfish based on the life history of the species (e.g., one or one and a half generation time frame). The Commission's Weakfish Technical Committee should be consulted regarding an appropriate rebuilding time-line for weakfish. Additionally, what, if any, trigger is provided for reopening the EEZ to harvest of weakfish? Language similar to that found in the South Atlantic Fishery Management Council's Red Drum FMP should be included. Specifically, NMFS should maintain the prohibition of harvest and possession of weakfish in or from the EEZ until a specified SSB per recruit is attained and until such time as a TAC is specified by regulatory notice, the Secretary, or whatever the appropriate mechanism is that provides for harvest in the EEZ.

Response: NMFS agrees. It is our understanding that Amendment 3 to the Commission's weakfish plan will include a rebuilding schedule in addition to the target F. NMFS believes that a realistic rebuilding schedule would be 2-5 years after a moratorium is put in place and the states adhere to the Commission requirements. The target for removal of the moratorium would be a SSB per recruit of 20 percent, which is the current long term rebuilding level used by the Commission.

4. *Comment:* In Section 4.2(1) of the DEIS/RIR there is discussion of the impact of the alternative on the discard mortality of undersize weakfish in the directed fishery, but there is no mention of the impacts related to discard mortality of weakfish caught as bycatch in other fisheries. In its current form, the preferred alternative does not provide any additional gain in terms of reducing discard mortality in non-directed fisheries in the EEZ, especially

the shrimp fishery. The relationship of the preferred alternative to bycatch reduction plans currently under development by the South Atlantic states and by the South Atlantic Fishery Management Council (SAFMC) needs to be clarified. Will the SAFMC's Shrimp FMP Amendment 2, pertaining specifically to bycatch, supersede this proposed Secretarial action as it relates to shrimp trawl bycatch in the EEZ?

Response: NMFS has further addressed bycatch and discards in the FEIS/RIR and in other responses to written comments on bycatch. The SAFMC's Shrimp FMP could control the bycatch requirements in the EEZ along with the Commission requirements, if the shrimp plan is amended properly, as they relate to reduction requirements and gear. However, the possession of weakfish in the EEZ will be controlled by the weakfish rule.

5. *Comment:* A number of commenters were concerned that implementing the rule would increase the bycatch (discards) of weakfish in non-directed EEZ fisheries and in directed and non-directed state fisheries.

Response: The rule would reduce some bycatch of small weakfish in the EEZ because there would be no directed EEZ fishery, and, therefore, bycatch from directed weakfish trips would be eliminated. The rule would not eliminate the discard mortality of undersize weakfish, as well as other species such as spot and Atlantic croaker, in the non-directed fisheries in the EEZ and in state waters. NMFS recognizes that a major problem with managing weakfish is how to reduce or control the bycatch of weakfish in other fisheries. The Commission is requiring states from North Carolina to Florida to implement bycatch reduction devices (BRDs) in shrimp trawls to reduce bycatch of weakfish by 50 percent. North Carolina met this requirement approximately 3 years ago.

In addition, the SAFMC is holding public hearings on several alternatives that will lead to an amendment to the Council's shrimp management plan that will address finfish bycatch. Several states, including Virginia and North Carolina, are experimenting with finfish escape panels for pound nets and haul seines. Bycatch can be minimized by implementing season closures and/or closed areas, and gear restrictions and modifications.

The NMFS rule to prohibit the harvest and possession of weakfish in the EEZ is aimed at complementing the Commission's weakfish plan and the individual state fishing plans approved by the Commission. The Commission's

plan requires states to adopt mesh restrictions and retain these as part of their approved fishing plans until March 1996. NMFS believes that the problem of bycatch presently is being addressed by the states and Councils and that the measures they have put in place, or that they will implement, should reduce the major sources of bycatch mortality.

NMFS is aware that, even with the implementation of state regulations, there will still be some discards and the problem could increase as the stock rebuilds and larger fish enter the population. Some discards are unavoidable, but are acceptable to achieve the long term gains to the stock that will occur from closing the EEZ to weakfish harvest and possession. NMFS will reconsider the moratorium when the spawning stock biomass reaches 20 percent, the Commission rebuilding goal. NMFS is also aware that there is the possibility that some of the effort will simply move inshore to state waters. However, through the Commission's plan, states will continue to implement their approved state fishing plans, and require mesh sizes for gear used to take weakfish that correspond to the minimum weakfish size that has been chosen in their plans. This will reduce total bycatch and discards.

NMFS will monitor the effectiveness of the rule including the bycatch and discard mortality and take additional actions to reduce weakfish bycatch if they are necessary to rebuild the stock.

6. *Comment:* A closure by NMFS in the EEZ violates the intent of Amendment 1 of the Commission's weakfish plan by removing the flexibility given to the states.

Response: The closure in the EEZ supports the Commission's effort to reduce fishing mortality. The need to protect a seriously declining stock overrides the desire to maintain flexibility in the EEZ fishery. Fisheries will continue in state waters and states are allowed flexibility as long as their regulations are approved by the Commission.

7. *Comment:* States can impose their own regulations in the EEZ and these landings can be enforced by the Coast Guard with a "Memorandum of Understanding" (MOU).

Response: In the absence of Federal rules, states may regulate only their own citizens when fishing in the EEZ. However, the states' rules to implement the Commission's weakfish plan are not identical among states, therefore, making enforcement of such rules in the EEZ among many states' fishermen impracticable. Also, not all states have

a MOU with the Coast Guard to carry out enforcement of their rules in the EEZ.

8. *Comment:* There are no accurate data that divide EEZ and state water catches. The importance of tabulating the EEZ catch is that the North Carolina fishermen are complying with the Commission's plan.

Response: NMFS concedes that landings from the EEZ are difficult to verify. However, NMFS considers the landings information accurate enough to estimate that a considerable amount of the fishery for weakfish takes place in the EEZ. Overall State and Federal landings were used in the stock assessment. Compliance with the Commission's plan in state waters by North Carolina fishermen is assumed as part of the cooperative management program on weakfish.

9. *Comment:* The statement in the document that the flynet fishery continues to catch thousands of weakfish as bycatch to obtain "10's" of salable fish is wrong.

Response: NMFS agrees with this statement. A review of the document has shown that the statement should have said "10,000's of salable fish." However, NMFS is concerned over the large number of small fish taken in the flynet fishery. A review of North Carolina flynet data has shown that the flynet fishery takes a large portion of small fish, many of which are discarded at sea.

10. *Comment:* Less than 20 percent of the flynet landings are less than 10 inches in length.

Response: Although less than 20 percent of the flynet landings are 10 inches in length, there are discards at sea of large numbers of fish smaller than 10 inches that are not landed. In addition, see North Carolina Division of Marine Fisheries flynet discussion on page 8 of the FEIS/RIR.

11. *Comment:* Several commenters said that the assumption that there would be an insignificant initial impact on very few fisherman with minimal cost to the government is false. Also, one commenter wanted a complete "regulatory flexibility analysis" prepared.

Response: NMFS concedes that there will be impacts to fishermen; however, for impacts to be considered significant under the DEIS/RIR they must exceed \$100 million. NMFS does not expect impacts of the rule to exceed the \$100 million level. No regulatory flexibility analysis is required unless there is a significant impact on a substantial number of small entities. Although directed fisheries are conducted for weakfish in the EEZ, the entire

commercial landings from the EEZ in recent years has been valued at less than 2 million dollars.

12. *Comment:* The assumption that the enforcement of the rule is clear is wrong.

Response: NMFS assumption that enforcement of the rule will be clear is based on the fact that the rule imposes a complete prohibition on fishing and possession of weakfish in the EEZ. NMFS has no reason to assume that enforcement of the rule will not be easily understood by fishermen and law enforcement officials.

13. *Comment:* North Carolina harvested over 65 percent by weight of the weakfish landings. Why isn't the South Atlantic Council writing a weakfish plan?

Response: Historical landings show that weakfish were an important Mid-Atlantic fishery and weakfish had been under consideration for management planning by the Mid-Atlantic Fishery Management Council. However, because of workloads on other species, the Mid-Atlantic Council has requested that NMFS assist the Commission's effort to manage the species.

14. *Comment:* The rule does not take into account and allow for variations among and contingencies in fisheries, fishery resources, and catches. A moratorium would take away the ability of North Carolina to redirect its fisheries through regulations or adapt to changes in fish populations or Commission guidelines.

Response: The rule is designed to deal with a severely depressed stock so options to rebuild the fishery are limited. Since the rule does not include state waters, it leaves flexibility for states, through the Commission, to address interactions with other fisheries and conduct some controlled fishing in state waters.

15. *Comment:* The states' and the Commission's actions are beginning to stabilize the weakfish population. NMFS needs to allow more time for these management measures to take effect before proposing more restrictive measures.

Response: The recent updated stock assessment (1994) shows that the weakfish population continues to be overfished and that recruitment of young fish to the fishery may be in jeopardy. The Commission's Weakfish Management Board has endorsed NMFS' efforts to implement the rule. Therefore, NMFS sees no reason to delay action.

16. *Comment:* If the rule is trying to protect a few year classes of fish to allow them to spawn, then why is there

any harvest at all allowed in the spring in spawning areas?

Response: Spring spawning takes place in state waters. Under the current Commission's plan, states are allowed, within limits, to take weakfish as long as the long term fishing mortality reductions are accomplished. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act, NMFS has no authority to implement regulations in state waters, except moratoria if states do not comply with the Commission's plan. Fishermen have to work through the Commission and state fisheries agencies to influence regulations in state waters.

17. *Comment:* Several commenters proposed using a 12-inch size limit in the EEZ because it is enforceable, reduces conflict in state and internal waters, and saves more weakfish than a complete closure.

Response: NMFS disagrees. A minimum size limit would still allow for a directed fishery which would provide an economic incentive to harvest. A moratorium negates all economic incentive to harvest, thereby limiting fishing mortality to the maximum extent possible.

18. *Comment:* To reduce recreational weakfish mortality, NMFS should reduce the minimum size to 12 inches. This will reduce catch and release mortality by allowing anglers to keep fish that would have to be thrown back dead.

Response: The rule is designed to reduce fishing pressure on weakfish in the EEZ to the maximum extent. Under the rule, directed fishing for weakfish will not be allowed and weakfish caught incidental to other recreational fishing must be immediately returned to the water. Allowing take and possession of 12-inch and over fish would encourage more fishing, not reduce fishing mortality.

19. *Comment:* NMFS should establish a no-trawl-zone at the mouth of large estuaries such as the Delaware and Chesapeake Bays. The closed area should be within a twelve mile radius centered at the mouth of each bay on the demarcation line. An alternative that has been suggested would be to extend the EEZ out to the twelve mile line all along the Mid-Atlantic coast and designate the waters inside of the 12 miles as a special management zone. The plan would still allow other types of fishing as long as the vessel is not trawling or using gear that would damage bottom structure.

Response: Establishing a no-trawl-zone out to twelve miles at the mouth of major estuaries would not protect weakfish from other fishing gears within

the closed trawl zone and would not reduce fishing effort on weakfish because fishing effort could be increased in the rest of the EEZ. The proposed alternative suggestion of designating all Mid-Atlantic waters out to 12 miles as a special management zone would be complicated to enforce and would not protect weakfish throughout the EEZ.

20. Comment: The closure will increase fishing efforts in state waters.

Response: NMFS concedes that there may be some shift in fishing effort to state waters. However, states allow fishing in their waters under the guidance of the Commission's plan, which is designed to control fishing effort.

21. Comment: Incidental weakfish bycatch should be allowed. Throwing back dead weakfish taken while fishing for other species is wasteful.

Response: NMFS believes it would be too difficult to determine that weakfish were caught as unwanted bycatch in a non-directed fishery. Allowing retention of dead fish may encourage directed fishing. It would also make the rule difficult to enforce.

22. Comment: The assumption that bycatch problems still exist in the South Atlantic shrimp fisheries lacks basis. The DEIS/RIR ignores the ongoing work by the shrimp industry to reduce bycatch.

Response: States are required through the Commission's weakfish plan to reduce weakfish bycatch by 50 percent by the 1996 shrimping season. While the use of Turtle Excluder Devices (TEDs) and experimental programs is reducing some bycatch, only North Carolina has an approved Commission weakfish bycatch reduction program implemented in its waters. NMFS believes that bycatch of weakfish in South Atlantic shrimp fisheries will continue to be a problem until approved bycatch programs are implemented throughout the south Atlantic area.

23. Comment: There will be long term economic impacts because of the shift in effort of fishing vessels to other stressed species in inshore waters.

Response: NMFS acknowledges that some vessels may shift effort to other species or into inshore waters. Because the stock is severely overfished, the need to protect and rebuild the fishery takes precedent over the immediate economic impacts. Since there still is some recruitment, this rule, when enacted with companion Commission actions, should rebuild the fishery in 2-5 years.

24. Comment: A lack of regulatory management is not a problem off the North Carolina Coast.

Response: Because of the poor condition of the stock, NMFS considers weakfish in need of more management along the entire Atlantic Coast, including the EEZ off of North Carolina.

25. Comment: The commercial industry in North Carolina has concerns over the credibility of the process being followed for the DEIS/RIR. The same staff that developed the DEIS/RIR are also taking and reviewing comments and making recommendations on the closure to higher NMFS officials.

Response: NMFS Headquarters, Northeast and Southeast Regional and Science Center staff have cooperated in the preparation of the DEIS/RIR and responses to the comments. These personnel are the most familiar with the weakfish fishery and are, therefore, the most qualified to review comments and make recommendations to higher NMFS officials, who also provide some measure of oversight.

26. Comment: The rule does not provide for maximum protection of weakfish because only 27 percent of all fishing mortality on weakfish results from directed recreational and commercial fishing gears.

Response: The rule gives maximum protection for weakfish in the EEZ employing available conservation and management measures because fishing for and/or possession is not allowed.

27. Comment: Alternative C states that this alternative "would increase the harvest of weakfish." North Carolina harvests over 50 percent of the weakfish in the EEZ with a 10-inch size limit. Consequently, moving to a 12-inch size limit with appropriate mesh sizes and maintaining the closure south of Cape Hatteras to flynets will not increase the harvest.

Response: Alternative C, if implemented with a 12-inch size limit with appropriate mesh, would reduce catch in North Carolina waters, but it would also increase catch off of other states that now have minimum size limits over 12 inches. Also, Alternative C, with a 12-inch size limit off of North Carolina, would be too difficult to enforce because there are other size limits and different companion weakfish regulations in place off of other states.

28. Comment: Implementing the proposed rule would create an increased effort in state waters that may increase contacts with marine mammals and sea turtles, an incident that could jeopardize all fishing in coastal waters.

Response: Implementing the rule may increase fishing effort in state waters, but fishermen would still be required to fish under Federal and State laws that protect marine mammals and sea turtles.

A biological opinion issued by NMFS concluded that the proposed weakfish regulation may affect, but will not likely jeopardize the continued existence of endangered and threatened sea turtles, marine mammals, and fish under NMFS jurisdiction. In addition, state biologists from New Jersey, Maryland, New York, and Virginia have stated that due to state regulations, they do not expect effort to shift inshore. If North Carolina keeps the area south of Cape Hatteras closed to flynet fishery, this will reduce potential impacts to endangered species as well.

National Standard Comments and Responses

NMFS received a number of comments that claimed that the proposed rule did not meet the National Standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The comments and responses are listed below:

National Standards - General

29. Comment: If the EEZ is closed, the bycatch and resulting waste will violate all of the National Standards in the Magnuson Act.

Response: The overriding need to protect the severely declining weakfish stock necessitates the EEZ closure (See response to comment 21). NMFS believes the measures in the rule are consistent with the Magnuson Act. If bycatch of weakfish contributes to significant mortality so as to negate stock rebuilding, NMFS will consider further measures.

National Standard 1

30. Comment: Closing the EEZ does not promote optimum yield.

Response: The proposed rule does promote the objectives of optimum yield because it is designed to rebuild stocks so that fisheries can eventually be reopened with healthier stock.

National Standard 2

31. Comment: The scientific information used to support the proposed rule has been changed to show a different age length at spawning composition.

Response: NMFS delayed publishing the FEIS until the 1994 stock assessment was completed. Upon a review of this stock assessment, it was determined to be consistent with and re-enforced the data on which NMFS had based its decision; the stock continues to be severely overfished and the biological indicators remain lower than the long-term averages. The 1994 assessment has incorporated several changes since the

last assessment, which should improve the accuracy of the assessment and better reflect the weakfish fishery. These include: revision of the catch-at-age-matrix to reflect the "new" Marine Recreational Fisheries Statistics Survey (MRFSS) methodology; new shrimp bycatch estimates which have been re-estimated and linked to shrimp fishery effort; additional fishery independent survey data which were unavailable in past assessments; new recreational fishery dependent citation data from Virginia, North Carolina, Maryland and Delaware; changes in the maturation schedule to reflect a 90 percent maturation at age one rather than the 50 percent used in the past; and a new Virtual Population Analysis (VPA) Model which is more consistent with the changing regulations in the weakfish fishery. However, the bottom line remains the same; weakfish stock continues to be severely overfished.

National Standard 3

32. *Comment:* Since the rule only includes measures for the EEZ, it does not manage the weakfish throughout its range.

Response: The proposed rule does manage weakfish throughout its range because it covers the entire range of weakfish in the EEZ and supports the Commission's effort to manage weakfish when they are in state waters.

33. *Comment:* Closing the EEZ, while the states have a different form of management, is not close coordination of management.

Response: The rule was developed in close coordination with the states through the Commission, which is also attempting to reduce fishing mortality on weakfish in state waters. The rule implements a measure that is consistent with the various regulations of the states.

National Standard 4

34. *Comment:* The rule does not meet National Standard 4 because it would only affect commercial fishing since most commercial fishing in some states takes place in the EEZ.

Response: The rule is consistent with National Standard 4 because a complete closure to fishing in the EEZ treats all fishermen fishing in the EEZ equally and therefore does not discriminate between residents of different states.

35. *Comment:* The rule is not fair and equitable because its intent is to stop North Carolina fishermen from harvesting weakfish so that there will be harvest in other states, especially in New England.

Response: The purpose of the rule is to reduce fishing mortality on weakfish

in the EEZ. With the weakfish stock in a depressed state, the species geographic range is constricted to the central areas of population density (mostly off of North Carolina and to a lesser extent through Delaware). Therefore, the major fishery is presently conducted by North Carolina fishermen. Fishing mortality can not be significantly reduced unless restrictions are placed in the areas where the fishery operates. In order for the rule to be effective, it must include the EEZ off North Carolina. The same restriction also applies to the EEZ off other east coast states. The intent of the rule is to rebuild the weakfish fishery along its entire historical range (Massachusetts through Florida), including waters off North Carolina.

36. *Comment:* Closing the EEZ to commercial fishing to allow sportfishing to increase landings is discriminatory.

Response: The rule is not discriminatory because it closes the EEZ to both commercial and recreational fishing and is designed to rebuild stocks so that both commercial and recreational fisheries will benefit.

37. *Comment:* The closure was not reasonably calculated to promote conservation.

Response: The rule is reasonably calculated to promote conservation because a closure gives protection to weakfish stocks in the EEZ.

38. *Comment:* No attempt was made to partition fishing mortality by state. The impression is that these regulations would be added to North Carolina in addition to existing regulations.

Response: Because weakfish migrate throughout most of the east coast EEZ, a closure of the waters off a selected state(s) would not be effective since gains made in reducing fishing mortality in one area could be negated by fishing in other areas. The rule's effects are additive to state regulations because the rule is design to complement the fishing reduction mortality program in the Commission's weakfish fisheries management plan that is implemented in state waters.

National Standard 5

39. *Comment:* The rule does not promote efficiency because throwing back fish caught incidentally in the EEZ is not efficient.

Response: NMFS concedes that some fish may be thrown back dead. However, allowing some fish to be kept would only encourage more fishing for weakfish. The overriding need to protect the depressed stock takes precedence.

40. *Comment:* The rule is a move by NMFS to increase the landing size to 12 inches, therefore, allocating the resource to those who take larger fish.

Response: The proposed rule does not have economic allocation as its purpose since all fishermen are treated the same. The rule has no size limit. It is a prohibition on the take and possession of weakfish in the EEZ, without regard to the size of the fish.

National Standard 6

No comments received.

National Standard 7

41. *Comment:* Most states are in compliance with the Commission's regulations. Therefore, the rule is an unnecessary duplication.

Response: The rule is not a duplication because it supports the Commission's effort to reduce fishing mortality on weakfish by insuring that there will be a comprehensive program to reduce fishing mortality on weakfish as they migrate throughout their State and Federal range.

Changes from the Proposed Rule

The definition section, § 697.2, of the proposed rule contained 14 definitions. Eleven of these definitions were already defined in § 620.2 of title 50 of the CFR. Any terms defined in § 620.2 are common to all domestic fishing regulations appearing in parts 630 through 699. Therefore, the eleven definitions were removed from the final rule to avoid duplication. In addition, eleven prohibitions listed in the proposed rule were reduced to four since seven of these prohibitions already appeared in § 620.7 and again would have been duplicative.

Classification

The final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities. This certification remains valid for this final rule. The reasons were published in the proposed rule. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 697 Fisheries, Fishing.

Dated: November 21, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, part 697 is added to 50 CFR chapter VI to read as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Subpart A—Atlantic Coast Weakfish Fishery

Sec.

- 697.1 Purpose and scope.
- 697.2 Definitions.
- 697.3 Prohibitions.
- 697.4 Relation to the Magnuson Act.
- 697.5 Civil procedures.
- 697.6 Specifically authorized activities.

Subpart B—[Reserved]

Authority: 16 U.S.C. 5101 *et seq.*

Subpart A—Atlantic Coast Weakfish Fishery

§ 697.1 Purpose and scope.

The regulations in this part implement section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*, and govern fishing for and possession of Atlantic Coast weakfish in the EEZ.

§ 697.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this

chapter, the terms used in this part have the following meanings:

Act means the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*

Atlantic Coast weakfish means members of stocks or populations of the species *Cynoscion regalis*, found in the waters of the Atlantic Ocean north of Key West, FL.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

§ 697.3 Prohibitions.

In addition to the prohibitions set forth in § 620.7 of this chapter, the following prohibitions apply. It is unlawful for any person to do any of the following:

- (a) Fish for Atlantic Coast weakfish in the EEZ;
- (b) Harvest any Atlantic Coast weakfish from the EEZ;
- (c) Possess any Atlantic Coast weakfish in or from the EEZ;
- (d) Fail to return to the water immediately, with the least possible injury, any Atlantic Coast weakfish taken within the EEZ; or
- (e) Make any false statement, oral or written, to an authorized officer concerning the taking, catching,

harvesting, landing, shipping, transporting, selling, offering for sale, purchasing, importing or exporting, or transferring of any Atlantic Coast weakfish.

§ 697.4 Relation to the Magnuson Act.

The provisions of sections 307 through 311 of the Magnuson Act, as amended, regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement apply with respect to the regulations in this part, as if the regulations in this part were issued under the Magnuson Act.

§ 697.5 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, seizures, and forfeitures under the Act and the regulations in this part.

§ 697.6 Specifically authorized activities.

NMFS may authorize for the acquisition of information and data, activities that are otherwise prohibited by these regulations.

Subpart B—[Reserved]

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