

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

• Fax: 206-526-6736, Attn: Jamie Goen.

• Mail: Barry Thom, Acting Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Jamie Goen.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Jamie Goen, phone: 206-526-4656, fax: 206-526-6736, and e-mail [jamie.goen@noaa.gov](mailto:jamie.goen@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This notice of availability is accessible via the Internet at the Office of the **Federal Register's** Website at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents are available at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/>.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider public comments received during the comment period described above in determining whether to approve Amendments 20 and 21 to the FMP.

Amendment 20 would modify the FMP to create the structure and management details of the trawl rationalization program for the limited entry trawl fishery. Amendment 21 would modify the FMP to allocate the groundfish stocks between trawl and

non-trawl fisheries and within trawl fisheries. The trawl rationalization program would consist of: (1) an individual fishing quota (IFQ) program for the shore-based trawl fleet; and (2) cooperative (coop) programs for the at-sea trawl fleet. The trawl rationalization program (Amendments 20 and 21) is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch.

NMFS will review Amendments 20 and 21 in their entirety. However, due to the complexity of the proposed fishery management measures, the proposed rule that will publish shortly after this notice of availability (NOA) for the FMP amendments, proposes only certain key components that would be necessary to have permits and endorsements issued in time for use in the 2011 fishery and in order to have the 2011 harvest specifications reflect the new allocation scheme. Specifically, the proposed rule would establish the formal allocations set forth under Amendment 21 and establish procedures for initial issuance of permits, endorsements, and quota shares under the IFQ and Coop programs. In addition, the proposed rule would restructure the entire Pacific Coast groundfish regulations at 50 CFR part 660 to more closely track the organization of the proposed management measures and to make the total groundfish regulations clearer.

If Amendments 20 and 21 are approved, NMFS plans to propose additional program details in a future proposed rule. Such additional details would include: Program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits/agreements, first receiver site licenses, quota share accounts, vessel accounts, further tracking and monitoring components, and economic data collection requirements. NMFS is also planning a future rule for the cost recovery program based on a recommended methodology yet to be developed by the Council. NMFS welcomes comments on the proposed FMP amendments through the end of the comment period. In order to encourage more informed public comment on the amendments, the preamble to the proposed rule includes a general description of the full trawl rationalization program, including general descriptions of program details

that will be implemented through additional rulemakings at a later date.

A proposed rule to implement initial allocations and appeals for Amendment 20 and the provisions of Amendment 21 has been submitted by the Council for Secretarial review and approval. NMFS expects to publish and request public review and comment on the proposed regulations to implement Amendments 20 and 21 in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment, which must occur no later than within 30 days of the end of the comment period. All comments received by the end of the comment period for the amendment, whether specifically directed to the amendments or the proposed rule, will be considered in the approval/disapproval decision.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 7, 2010.

**James P. Burgess**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010-11346 Filed 5-11-10; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 697**

[Docket No. 0912011421-0200-01]

**RIN 0648-AY41**

**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 decrease the incidental catch allowance for weakfish caught in the Exclusive Economic Zone (EEZ), from 150 lb (68 kg) to no more than 100 lb (45 kg) per day or trip, whichever is longer in duration. The intent of this proposed rule is to modify regulations for the Atlantic coast stock of weakfish to be more compatible with Addendum IV to Amendment 4 of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for weakfish. Such action is authorized in the Atlantic

Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act).

**DATES:** Written comments must be received on or before June 11, 2010.

**ADDRESSES:** You may submit comments, identified by RIN 0648-AY41, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East West Highway, Suite 13317, Silver Spring, MD 20910, Attn: State-Federal Team. Mark the outside of the envelope: "Comments on Weakfish Addendum IV."

- Fax: (301) 713-0596, Attn: State-Federal Team.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Brian Hooker, (301) 713 2334.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Pursuant to its authority under section 5103 of the Atlantic Coastal Act, 16 U.S.C. 5101–5108, NMFS proposes to modify the current weakfish conservation measures in the EEZ. The Atlantic Coastal Act provides 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 3, 2009, the Commission adopted Addendum IV to Amendment 4 to the ISFMP for Weakfish (Addendum IV), in response to the stock status of weakfish. A recent peer-reviewed assessment found the weakfish stock to be depleted, with spawning stock biomass estimated to be three percent of an unfished stock, well below the 20-percent threshold and 30-percent target reference points approved by the Commission's Weakfish Management Board as part of Addendum IV. The decline in biomass reflects a sustained rise in natural mortality after 1995, rather than fishing mortality, which has been modest and stable over the same time period. In response to these findings, the Commission's Weakfish Management Board approved management measures to reduce exploitation of weakfish by more than 50-percent in both the recreational and commercial sectors. Addendum IV requires states to implement a one-fish recreational creel limit, 100 lb (45 kg) commercial trip limit, and 100 lb (45 kg) commercial bycatch limit during closed seasons. Addendum IV maintains the current 12-inch (30.5 cm) minimum size for weakfish, but lowers the exception to this management measure, the undersized fish limit, from 300 to 100 undersized fish per commercial trip. The sale of undersized fish continues to be prohibited. In implementing Amendment 4 to the weakfish plan, NMFS never adopted the 300 undersized fish exception to the 12-inch (30.5 cm) minimum fish size in Federal waters. NMFS continues the policy of no exemptions to the minimum size limit in the weakfish fishery here by not proposing a 100 undersized fish exception to the current minimum size limit in Federal waters. The Commission recommended in Addendum IV that NMFS promulgate all necessary regulations to implement complementary measures to those approved in the addendum.

##### **Status of the Weakfish Fishery**

An assessment of the weakfish stock was completed in 2009 by the Weakfish Stock Assessment Subcommittee and peer reviewed by the 48th Stock Assessment Review Committee at the 48th Northeast Regional Stock Assessment Workshop (SAW). The assessment includes fishery data and survey indices through 2007. The results of the assessment indicate that weakfish abundance has declined markedly since 1995, total mortality is high, non-fishing mortality has increased, and the stock is currently in a depleted state. The weakfish stock is

at an all-time low of 10.8 million lb (4,899 mt), far below the biomass threshold of 22.4 million pounds (10,179 mt). At this stock size, recent fishery removals (landings and dead discards combined) represent a significant proportion of the remaining biomass. While the decline in the stock primarily results from a change in the natural mortality of weakfish in recent years, it is further exacerbated by continued removals by the commercial and recreational fisheries. Natural mortality has risen substantially since 1995, with factors such as predation, competition, and changes in the environment having a stronger influence on recent weakfish stock dynamics than fishing mortality. Given current high natural mortality levels, stock projections indicate that the stock is unlikely to recover rapidly, even under a harvest moratorium.

##### **Proposed Action**

At present, Federal regulations do not differentiate between recreational and commercial weakfish fishing; current Federal regulations simply prohibit possession of more than 150 pounds of weakfish in any one day or trip regardless of fishing sector. The implementation of Commission Addendum IV would change that. There would be no changes or exceptions to the current 12-inch minimum size limit.

##### *Commercial Fishery*

Commission Addendum IV would lower the weakfish possession limit from 150 pounds to 100 pounds (45 kg). The proposed compatible Federal rule would allow commercial fisheries to possess no more than 100 lb (45 kg) of weakfish during any one day or trip, whichever is longer in duration. This change would be a decrease of 50 lb (23 kg) per day or trip from the current Federal regulation of 150 lb (68 kg). This possession limit would be year-round, regardless of state-established fishing seasons. According to the Commission's Weakfish Technical Committee, this reduction could realize a 60-percent coastwide reduction in weakfish landings. All other weakfish prohibitions found in 50 CFR 697.7, including the 12-inch minimum fish size, and the weakfish flynet closure off the North Carolina coast, would remain in effect. It should be noted that the current Federal 12-inch (30.5-cm) minimum fish size is more restrictive than that required under Addendum IV, as the Federal regulation does not allow for any fish to be retained below the size limit.

### Recreational Fishery

Under the Commission's Addendum IV, and proposed herein, the recreational fishing possession (bag/creel) limit would be reduced to one fish per person per day. Analysis by the Commission in the public information document for Addendum IV indicated that a coastwide possession limit of one fish per person with a 12-inch minimum size could realize a 54-percent harvest reduction. The one fish coastwide creel limit at current minimum sizes will also discourage directed fishing for weakfish, and allow for a small harvest of weakfish while fishing for other species.

These proposed commercial and recreational fishery management measures support the Commission's ISFMP by being compatible with the effective implementation of the Commission's Weakfish ISFMP. They are also consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act, and would continue regulatory uniformity in state and Federal waters. This action would also be beneficial insofar as incongruous regulations can confuse stakeholders and complicate management.

### Classification

This proposed rule is published under the authority of the Atlantic Coastal Act. Paragraphs (A) and (B) of section 804(b)(1) of the Atlantic Coastal Act, 16 U.S.C. 5103(a)-(b), authorize the Secretary to implement regulations in the EEZ in the absence of a Magnuson-Stevens Act fishery management plan. Such regulations must be necessary to support a Commission's ISFMP, and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries has determined that this proposed action is compatible with the effective implementation of the Commission's ISFMP for weakfish and consistent with the national standards of the Magnuson-Stevens Act, subject to further consideration after public comment. The Secretary, before making the final determination, will take into

account data, views, and comments received during the comment period.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would be implemented in concert with complimentary regulations in the adjacent Atlantic coastal states. All entities affected by this rule are considered small entities by the SBA standard. Weakfish commercial fishing is regulated on a state-by-state basis through the Commission. Weakfish, which are caught predominantly in state waters, are caught incidentally to fisheries targeting other species of fish. The reduction in the possession limit should encourage fishers to avoid areas where weakfish bycatch might be a problem and/or return caught fish to the water as soon as practicable.

Based on the total number of Federal permits in the affected states (there is not a Federal weakfish permit), an estimated total of 1,092 small entities could be impacted by this rule. The total 2008 value of the commercial weakfish fishery in Federal waters was approximately \$178,000. It is estimated that the 100 lb possession limit will reduce coastwide (state and Federal) landings by 60-percent. However, Federal data indicates that federally-permitted vessels are catching an average of less than 100 lb per trip, and would thus not realize any loss as a result of the proposed rule. Using the best data available, the estimate of impacts per entity as a result of this proposed rule is approximately \$0.00 - \$54.00 per year. Because weakfish are caught in multispecies trawl fisheries occurring among several states, gross revenue per trip accounting for all species could not be calculated, but NMFS is certain that the zero to de minimis loss in weakfish revenue does not represent a significant economic impact to any vessels comprising the universe of small vessels that may be affected. Accordingly, an initial regulatory flexibility analysis is not required and none has been prepared.

### Reporting and Recordkeeping Requirements

This proposed rule would not impose any new reporting, recordkeeping, or other compliance requirements.

There are no Federal rules which may duplicate, overlap, or conflict with the proposed action. This action is considered to be "not significant" under Executive Order 12866.

### List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: May 6, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 697 is proposed to be amended as follows:

### PART 697 ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for 50 CFR part 697 continues to read as follows:

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

2. In § 697.7, paragraphs (a)(1), (a)(2), and (a)(4) are revised to read as follows:

#### § 697.7 Prohibitions.

(a) \* \* \*

(1) Fish for, harvest, possess, or retain any weakfish less than 12 inches (30.5 cm) in total length (measured as a straight line along the bottom of the fish from the tip of the lower jaw with the mouth closed to the end of the lower tip of the tail) in or from the EEZ.

(2) It is unlawful to possess more than 1 weakfish per person, during any one day or trip, whichever is longer, when engaged in recreational fishing in the EEZ.

\* \* \* \* \*

(4) It is unlawful to possess more than 100 lb (45 kg) of weakfish during any one day or trip, whichever is longer, when engaged in commercial fishing in the EEZ.

\* \* \* \* \*

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