

State/location	Community No.	Effective date of eligibility	Current effective map date
Michigan: Meyer, township of, Menominee County	260458do	Do.
Region IX			
Arizona: Santa Cruz County, unincorporated areas	040090do	Do.
California: Hemet, city of, Riverside County	060253do	Do.

¹ The City of Mill Creek has adopted the Snohomish County (CID #535534) Flood Insurance Rate Map dated September 30, 1992.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: September 11, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97-25104 Filed 9-19-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 970829213-7213-01; I.D. 091696A]

RIN 0648-AJ15

Atlantic Coast Weakfish Fishery; Change in Regulations for the Exclusive Economic Zone

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

ACTION: ACTION: Final rule.

SUMMARY: NMFS is issuing regulations for the exclusive economic zone (EEZ) offshore from Maine through Florida that impose a minimum size limit of 12 inches (30.5 cm) (total length); minimum mesh sizes in the EEZ of 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 gill nets; a bycatch possession limit of 150 lb (67 kg) for fisheries using smaller mesh sizes for any one day or trip, whichever is longer; a prohibition on the use of flynets in a closed area of the EEZ off North Carolina, south of Cape Hatteras from 3 nm to about 40 nm offshore; a prohibition on the possession of any weakfish in the closed area of the EEZ off North Carolina when using shrimp trawls or crab trawls; and a requirement that weakfish harvested for commercial purposes in the EEZ be landed only in the following states: Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, or North Carolina. In addition,

weakfish fishing must be in accordance with the laws of the state where weakfish are landed if the state's regulations are more restrictive than the Federal regulations. The intent of the regulations is to provide protection to the overfished stock of weakfish, ensure the effectiveness of state regulations, and aid in the rebuilding of the stock. **DATES:** Effective October 22, 1997.

ADDRESSES: Copies of supporting documents, including a Final Supplemental Environmental Impact Statement and Regulatory Impact Review (FSEIS/RIR), are available from Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910-3282.

FOR FURTHER INFORMATION CONTACT: Thomas Meyer/Anne Lange, 301-427-2014.

SUPPLEMENTARY INFORMATION:

Background

The background and rationale for this rule were contained in the preamble to the proposed rule, published in the **Federal Register** on February 14, 1997 (62 FR 6935), and are not repeated here. Additional background for this rule is available and contained in a FSEIS/RIR prepared by NMFS for this rule (see **ADDRESSES**).

Comments and Responses

NMFS received written comments from 17 agencies, states and organizations and five individuals, and held four public hearings attended by 74 individuals, to gather public comments on the proposed rule. Details of both the written comments and the public hearings are provided in the FSEIS/RIR published in the **Federal Register** on July 3, 1997 (62 FR 36062). Written and public hearing comments are summarized here.

Each of the State and Federal agencies and conservation organizations supported the proposed rule and found its measures to be compatible with state and Atlantic States Marine Fisheries Commission (Commission) fishery management plans for weakfish. The

U.S. Coast Guard suggested changes to clarify current language and to address several enforcement issues. The U.S. Fish and Wildlife Service fully supported the proposed rule and urged the earliest possible adoption of both the weakfish rule and a proposed rule to implement a program to certify specific Bycatch Reduction Devices (BRDs) for shrimp trawls (final rule published in the **Federal Register** on April 16, 1997 (62 FR 18536)). The Mid-Atlantic Fishery Management Council supported the proposed rule and, based on its comments, an additional public hearing was held in North Carolina to address industry concerns related to the impact of the proposed rule on other fisheries conducted in the closed area off North Carolina.

1. Comment: One agency commented that language, consistent with regulations requiring the use of Turtle Excluder Devices (TEDs) in the summer flounder fishery, should be included in the prohibitions (§ 697.7) to require use of TEDs by vessels using nets in the EEZ north of Cape Hatteras.

Response: Under the requirements of section 7 of the Endangered Species Act, NMFS has evaluated the impact the weakfish fishery may have on turtles. Based on the Biological Opinion issued by NMFS, reasonable and prudent measures will be taken to minimize the impact of the weakfish fishery on sea turtles. This will include development of an effective TED for flynets and a schedule for implementation in flynet gear during the times and areas as required for summer flounder (50 CFR 217.12 and 227.72). In addition, an Incidental Take Statement has been issued by NMFS, anticipating documented lethal or non-lethal takes in the weakfish fishery of a maximum total of 20 loggerhead turtles and two Kemp's ridleys in flynet, bottom trawl, or gillnet gear. Should these levels be exceeded, consultations must be reinitiated.

2. Comment: Several commenters suggested that the proposed closed area line should be modified to be consistent with the line in the North Carolina regulations, which proceeds in a southeasterly direction from Cape

Hatteras, not due east as in the proposed rule.

Response: NMFS agrees. The northern boundary of the line to delineate no flynetting south of Cape Hatteras has been modified to be aligned with the State of North Carolina's line. However, while this line will follow as closely as possible the State's line (40250 Loran C line), it will be defined by latitude/longitude, and enforced as such. Therefore, the line proceeds SE in a straight line from a point, 35°10.8' N. lat., 75°29.2' W. long. (3 nm from Cape Hatteras), generally proceeding along the 40250 LORAN C line, to a point 35°06.5' N. lat., 75°19.4' W. long. (12 nm from Cape Hatteras).

3. *Comment:* Several commenters were concerned that the proposed regulations could potentially impact other fisheries in the EEZ off the coast of North Carolina.

Response: NMFS believes it is important to maintain the closed area south of Cape Hatteras in order to protect young weakfish. Therefore, flynets will not be allowed in the closed area to fish for spot, croaker, or any other species. Concerns regarding the squid/mackerel/butterfish fishery, which uses a small-mesh trawl similar to a flynet in the original closed area, led NMFS to adjust the closed area so such gears could continue to fish without likelihood of encountering young weakfish. Section 697.7(a)(5), the area closed to flynetting in the proposed rule has been modified. Vessels fishing with other than shrimp trawls (with certified BRDs as required by 50 CFR part 622, Appendix D, and TEDs as required by 50 CFR 227.72(e)(2)(ii)) or summer flounder trawls (with approved TEDs) are prohibited from fishing in the closed area, because they are likely to have a significant bycatch of weakfish. However, they are permitted to fish outside the modified closed area for squid, croaker, spot, or other species. They are limited to a 150-lb (67-kg) weakfish bycatch, unless mesh sizes are larger than those described in this rule. Vessels using gillnets with proper mesh may operate within the no-flynet area.

During the winter of 1996-97, a number of vessels using shrimp trawls to fish for finfish in the closed area produced a significant bycatch and mortality of young weakfish. North Carolina is modifying its regulations to require that vessels possess at least 50 percent shrimp, by weight, to be considered a shrimp vessel and to be permitted in the closed area. The Commission has required North Carolina to demonstrate that it has implemented adequate measures to prevent future directed finfish harvest

with shrimp trawls. To support North Carolina and Commission actions, this final rule prohibits the possession of any weakfish by vessels using shrimp trawls in the closed area.

4. *Comment:* One agency commented that the intent to prohibit vessels from catching weakfish in the EEZ and landing the fish in a "de minimis" state (§ 697.7(a)(7)) is not enforceable at landing, since it is impossible to determine where the fish were harvested, either from the EEZ or another state's waters, which may be open.

Response: NMFS believes that while this measure may be difficult to enforce, it will help state agencies enforce their regulations to implement the Commission's weakfish management plan. This measure will prevent a person from saying he/she caught weakfish in the EEZ, when landing for commercial purposes in a "de minimis" state or a state that has not declared an interest in weakfish management. This will make circumventing states' closed fishing seasons and other regulations more difficult, since "de minimis" states and states without a declared interest have little or no weakfish fisheries. Also, it is important that those states that have requested "de minimis" status from the Commission ensure that landings of weakfish in those states remain below the level required to maintain their "de minimis" status. While weakfish landings in these states are not expected to increase, if they do increase significantly, the states will be required to assume the responsibilities associated with being a participating state. Therefore, the "de minimis" states should also be involved in enforcing this measure. The "de minimis" states most likely to be impacted by landings from other states' vessels (South Carolina and Georgia) have detailed monitoring programs and would quickly know if weakfish landings were increasing beyond the "de minimis" level. The Commission has specifically requested that the "de minimis" language be included in the EEZ rule in order to support Commission efforts in state waters. The Commission has requested that any enforcement problems raised by this provision be forwarded to the Commission's Weakfish Management Board.

5. *Comment:* One commenter stated that the language to prohibit the possession of more than 150-lb (67-kg) of weakfish during any one day or trip, whichever is longer, in the EEZ when fishing with less than the approved mesh size should be clarified. It should be changed to read:

"To prohibit the possession of more than 150-lb of weakfish during any one day or trip, whichever is longer, in the EEZ when:

(i) 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 27/8 inch (7.3) stretch mesh for gill nets; or

(ii) fishing during any closed season for weakfish of the state in which the weakfish are landed."

Response: NMFS agrees and has included such language in the final rule. However, in the area off North Carolina that is closed to flynetting, no weakfish may be landed in the shrimp fishery (see comment 3). In addition, summer flounder gear, even though it has a larger than required mesh, are allowed only a 150-lb (67-kg) bycatch of weakfish.

6. *Comment:* The proposed rule is not consistent with North Carolina regulations regarding the use of flynets in the closed area south of Cape Hatteras. The proposed rule would only prohibit their use for weakfish, while the State prohibits their use for any species in the closed area.

Response: The intent of the proposed rule was to be compatible with the State's regulation. The prohibitions section in the final rule has been modified to clarify that no fishing with flynets is allowed in the specified area south of Cape Hatteras.

7. *Comment:* Several individuals commented on the status of the stock, stating that the weakfish stock is recovering strongly, that references to a declining population are not substantiated by coastwide biological information, that the assessment is outdated and incorrect, and that declines in catch are due to shifts to other target species.

Response: Although some signs of recovery are present in the most recent years, there is insufficient evidence to say that the weakfish stock is recovering strongly. Also, while there may have been shifts of effort to other fisheries leading to declines in harvest, the stock assessment uses fishery independent data (data from scientific surveys) on weakfish abundance through most of its range. These surveys demonstrate that there has been a decline in the weakfish stock, though there are signs of improvement in recruitment of the most recent year classes. Weakfish mature early (age 1) and have high fecundity, so they have the ability to recover quickly, given favorable conditions and reduced fishing mortality rates (F). The last stock assessment for which population estimates are available (catch matrix through 1994) indicated that the

population bottomed out in 1991 and has recovered somewhat. There may be recent indications of improved recruitment and observations of more, larger (older) fish, in 1996; however, fishing mortality rates for recent years remain very high (about 1.9 for age 2+, with catch matrix through 1995). Improved recruitment will likely cause a prompt and noticeable short-term stock improvement. However, if the fishery continues to operate at high F, the promising recruitment levels will not be reflected in subsequent improvements in the adult population. Until a revised assessment has been completed that indicates improvements in stock status, other than a year or two of good recruitment, it is premature to say the stock is recovering.

The science used by the Commission's weakfish stock assessment and technical committees relies on the best available fishery-dependent and fishery-independent data. The models and analyses involved in the assessment are those that are best suited for the available data. The assessment is based on the coastwide status of the stock and does not look only at local events.

8. Comment: One agency and an individual stated that small-mesh trawls used in the area south of Cape Hatteras must be defined not by their gear parameters but by their fishing intentions (e.g., shrimping as opposed to shrimp trawls; floundering, as opposed to flounder trawls.) Under the proposed rule, it would be legal to finfish using shrimp trawls in the area south of Cape Hatteras, as long as weakfish are not retained. There are substantial data that indicate that this leads to tremendous waste in discards. Flounder trawls have no business in the area south of Cape Hatteras, outside the flounder trawling season. On the other hand, squid fishermen may likely take quantities of weakfish over 150-lb (67-kg) in legitimate squid/mackerel/herring/butterfish operations, but those fish must be discarded. These fisheries should be defined with respect to the amount of the target species on their vessel when they land, and not simply by the nets they use. At least 51 percent of their catch must be comprised of one or more of the target species. Another option would be to consider closed seasons, particularly for the shrimp fishery, to avoid fishing with shrimp trawls during the winter (December 1–April 1).

Response: NMFS is concerned over reports of fishing with small-mesh nets causing the discard of large amounts of weakfish south of Cape Hatteras. However, under the NMFS regulation, a

state's more restrictive regulations apply to weakfish caught in the EEZ when those fish are landed in a state. A state could choose to institute such suggested regulations to reduce bycatch on small-mesh fishing vessels landing in the state.

Also, north of Cape Hatteras, in the future, NMFS will consider modifying the regulations to allow states to issue special permits that will allow legitimate small-mesh fisheries for squid/mackerel/herring/butterfish to take more than 150-lb (67-kg) of legal size weakfish during any one day or trip, whichever is longer, in the EEZ during the state's open weakfish season. North Carolina has requested such permits because it believes that larger quantities of legal weakfish may, when the population is moving through the area, be taken during these fisheries directed at other species. This is not expected to occur frequently, but North Carolina wants the ability to allow vessels to land these fish, rather than discard them.

9. Comment: Several commenters stated that the 2 7/8-inch minimum mesh size for gillnets is appropriate for North Carolina during winter; however, they questioned whether this mesh size is conservative for a 12-inch (30.5-cm) weakfish during the spring/summer/fall when weakfish are gravid or well-fed, thereby having greater girth. NMFS should consider a more conservative mesh size during spring/summer/fall (i.e., 3 1/8-inch (7.9-cm) stretch mesh).

Response: NMFS used the mesh sizes approved and required by the Commission because these mesh sizes have been reviewed and approved by the Commission Weakfish Technical Committee and Management Board, and have been implemented by the states. NMFS participates in the Commission review and agrees that these mesh sizes are based on the best information available. If the Commission approves and recommends changes to weakfish mesh sizes, and if NMFS agrees the changes are consistent with the best information available, NMFS will adjust the EEZ mesh regulations to be compatible with the Commission's recommendations.

10. Comment: Several commenters were concerned whether, once a closure of the area south of Cape Hatteras is imposed on flynets, NMFS will be able to open the area to large-mesh flynets in the near future.

Response: Once the stock has recovered, NMFS will consider reopening this area to larger mesh flynetting, if the Commission determines that this gear is appropriate for capturing legal-sized weakfish.

11. Comment: One commenter indicated that New York has taken aggressive management steps to restore weakfish and to ensure a healthy weakfish population. NMFS regulations will complement the regulations already in effect in state waters and can only benefit what is now a severely stressed weakfish population.

Response: NMFS agrees. The intention of this rule is to implement EEZ management measures that are compatible with state and Commission measures already in place in state waters.

12. Comment: One commenter and a conservation organization stated that the status of the Atlantic weakfish stock has been grave for a long time. The unfortunate invalidation of the 1995 NMFS moratorium on weakfish fishing in Federal waters further delayed necessary Federal action for this important stock and makes implementation of current proposed measures for weakfish even more urgent. Federal action to begin to rebuild the weakfish stock is long overdue. Because weakfish fishing operations in the EEZ mainly target large, vulnerable aggregations of juvenile fish, they support a full moratorium on weakfish fishing in Federal waters as a strong conservation measure that is easy to enforce. Given the previous court ruling and the urgency of the situation, however, they support the intention to complement the Commission's weakfish plan.

Response: NMFS agrees that establishing management measures in the EEZ is crucial to the recovery of the weakfish population. Adoption of Amendment 3 to the Commission Weakfish Fishery Management Plan, and its recommendations for compatible actions in Federal waters, should begin to protect and restore the weakfish population.

13. Comment: One commenter stated that he strongly supports the approach taken by NMFS to address the concerns regarding landing weakfish in "de minimis" states. However, he suggested that from an administrative standpoint, NMFS may want to explore language that would allow a currently "de minimis" state, if it so desires, to declare an interest in the fishery without issuance of a new Federal rule.

Response: NMFS understands that current "de minimis" states may, at some future time, declare an interest in participating in the fishery, and language that would allow such a declaration without issuance of a new rule would be useful. However, since the NMFS proposed rule is designed to be compatible with measures

implemented by the states, NMFS can not determine what measures may be needed in the EEZ off the coasts of South Carolina and Georgia until they establish measures in their own waters. Once a state's "de minimis" status is removed by the Commission, NMFS sees no reason to restrict commercial landings in the state. Therefore, such restrictions will be removed by rulemaking upon notification from the Commission.

14. Comment: One commenter indicated that the statement that shrimp and flounder trawls are the only types of trawls allowed in the area closed to flynets is incorrect. North Carolina also allows crab trawls.

Response: The NMFS proposed rule would have allowed only shrimp or flounder trawls to trawl in the closed area of the EEZ. This was because the rule was intended to prohibit flynets, as in the North Carolina plan, and it was not possible to define a flynet with sufficient specificity for this rule. Therefore, NMFS specified which types of fishing gear would be allowed in the closed area. NMFS contacted the North Carolina Division of Marine Fisheries, which reported few, if any crab nets used in the EEZ off North Carolina; therefore, this gear was excluded.

15. Comment: One industry organization requested that NMFS reconsider closing the entire EEZ south of Cape Hatteras, stating that the current North Carolina state closure to North Carolina vessels was developed in the absence of any standards pertaining to fairness and equitability among fishery participants. North Carolina fishermen have taken a larger reduction in fishing effort compared to fishermen in other states and North Carolina vessels are the only vessels impacted by this regulation. They do not believe that this closure is consistent with national standards of the Magnuson-Stevens Act.

Response: NMFS has reconsidered closing the entire EEZ south of Cape Hatteras and the final rule now closes an area out to only 20–40 nm, not out to 200 nm. The North Carolina plan was approved by the Commission as meeting the fishing mortality reduction requirements in Amendment 3 of the Weakfish FMP. All states were held to the same level of reduction, though it was up to each state to determine how it would meet that reduction. NMFS' proposed regulations were compatible with the states' regulations. Since, under North Carolina regulations, North Carolina vessels may not use a flynet south of Cape Hatteras, this rule does not further restrict North Carolina vessels beyond what the State has already implemented. However, the

Federal regulation does apply to all vessels, not just North Carolina vessels, fishing in the modified closed area of the EEZ, south of Cape Hatteras.

Therefore, the rule is consistent with the national standards of the Magnuson-Stevens Act.

16. Comment: The NMFS justification not to conduct an Initial Regulatory Flexibility Analysis (IRFA) violates provisions of the Regulatory Flexibility Act. The proposed rule contains four reasons why no IRFA is necessary, all of which are thoroughly invalid.

Response: A regulatory flexibility analysis (RFA) is required when there is a significant economic impact on a substantial number of small entities. NMFS believes that the proposed regulations do not meet the above criteria for development of an RFA because the impacts on small entities have already occurred through state implementation of Amendment 3 to the Commission's Weakfish FMP. These Federal regulations are designed to be compatible with state regulations and will have minimal additional impacts. In the case of North Carolina, the State implemented regulations in October 1996 that closed the entire EEZ south of Cape Hatteras to flynets. This rule has modified the closed area by significantly reducing its size, which will lessen the impact on North Carolina fishermen. However, non-North Carolina vessels are now affected by the Federal closure. There are no records of vessels from states other than North Carolina fishing with flynets in the Federal closed area. North Carolina vessels affected by the regulations are able to fish in other areas or with different gears.

17. Comment: An industry organization requested that, in place of the full EEZ closure, NMFS consider leaving an area outside of 6 nm open to flynet fishing south of Cape Hatteras only during December through March. Flynet vessels using approved mesh size and adhering to minimum fish size would be permitted to fish in that area only during the specified time period.

Response: NMFS has modified the closed area as noted above (comment 3).

18. Comment: One commenter asked why NMFS hasn't continued to pursue a complete moratorium on fishing for weakfish in the EEZ, as was imposed in November 1995.

Response: The NMFS rule, which imposed the moratorium in 1995, was set aside by the court in February 1996. The rule had been developed prior to the Commission's completion of Amendment 3 to the Weakfish FMP as a measure needed to protect weakfish. The final rule accounts for the measures already implemented by the states

under the Commission's plan and supports coastwide coordination in the long-term management of this stock.

19. Comment: One individual asked why NMFS doesn't implement a coastwide minimum size of 13 inches (33.0 cm)?

Response: The proposed rule is a first step in developing management measures compatible with those of the Commission. The Commission allows states to implement size limits and other management measures to reduce F. NMFS will consider additional measures, such as a 13-inch (33-mm) minimum size, if the Commission determines further reductions in F are needed in the future.

20. Comment: A North Carolina fishermen association disagreed with the decision that a regulatory flexibility analysis was not needed and stated that the EEZ closure to flynet fishing will significantly impact the flynet fishery.

Response: The North Carolina vessels that will be impacted by the EEZ closure have already been prohibited from a larger area by North Carolina regulations that went into effect on October 1, 1996. Thus the Federal regulation is not expected to have a significant economic impact. Further, the vessels prohibited from the area can move to other areas and fisheries and, in fact, most have already done so. As a result, a regulatory flexibility analysis was not prepared.

Changes from the Proposed Rule

The definition section, § 697.2, of the proposed rule contained 22 definitions. Six of these definitions are already included in 50 CFR 600.10. Any terms defined in § 600.10 are common to all domestic fishing regulations appearing in Chapter VI of title 50 CFR. Therefore, the six definitions were removed from the final rule to avoid duplication. A definition of crab trawls was added.

In response to public, state and Federal agency, and Commission comments, the following changes have been made to the prohibition section, § 697.7, of the proposed rule:

1. The area of the EEZ south of Cape Hatteras, closed to flynetting, has been modified to:

- a. Have its northern boundary conform with North Carolina's closed area boundary line;
- b. Extend out to only about 20–40 nm from the shore, depending on the contour of the land; and
- c. Extend only to the North Carolina—South Carolina state line.

2. The closed area applies to all flynetting, not just flynetting for weakfish.

3. Washington, DC, which had incorrectly been listed as a state where

weakfish caught in the EEZ may be landed, has been removed from the list.

4. A prohibition on the possession of weakfish in the closed EEZ area when using shrimp trawls and crab trawls has been added.

5. Florida was granted "de minimis" status by the Commission on August 1, 1997, and is therefore no longer included in the list of states where weakfish harvested for commercial purposes in the EEZ may be landed.

Changes from the Final Supplemental Environmental Impact Statement (FSEIS)

In response to comments from the North Carolina Division of Marine Fisheries (NCDMF) the outer boundary of the closed area south of Cape Hatteras was extended approximately 5 nm seaward of the line defined in the FSEIS to prevent fishing on small weakfish known to concentrate beyond the closed area described in the FSEIS. Also, crab trawls have been included, with shrimp trawls, in the prohibition of possession of weakfish in the closed area of the EEZ off North Carolina.

Classification

The Assistant Administrator for Fisheries has determined that these actions are compatible with the effective implementation of the Commission's coastal FMP, and consistent with the national standards of the Magnuson-Stevens Act. The Secretary has taken into account the data, views, and comments received during the comment period.

Five different alternatives to regulate the harvest of weakfish in the EEZ were examined in the FSEIS/RIR. Alternative D, which applies compatible Federal regulations in the EEZ, provides the greatest support for the Commission's Weakfish Plan. Alternatives prohibiting the harvest and possession or harvest only in the EEZ were also considered, as well as alternatives establishing separate specific regulations in the EEZ, applying state regulations in the EEZ, or doing nothing. NMFS determined that, among the alternatives analyzed, the Federal measures discussed above are the most appropriate measures to support the Commission's Weakfish Plan.

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 when this rule was proposed, that it would not have a significant economic impact on a substantial number of small entities. The reasons for the certification were published in the preamble to

proposed rule. NMFS received a comment, addressed above, regarding the certification. This comment did not cause this determination to be changed. As a result, no regulatory flexibility analysis was prepared.

Further information is available in the FSEIS/RIR (See ADDRESSES).

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

List of Subjects in 50 CFR Part 697

Administrative practice and procedure, Fisheries, Fishing.

Dated: September 12, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Sec.

697.1 Purpose and scope.

697.2 Definitions.

697.3 Relation to the Magnuson-Stevens Act.

697.4 Relation to state law.

697.5 Civil procedures.

697.6 Specifically authorized activities.

697.7 Prohibitions.

Authority: 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

§ 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 section 6 of the Atlantic Striped Bass Conservation Act Appropriations Authorization, 16 U.S.C. 1851 note, and govern fishing in the EEZ on the Atlantic Coast for species covered by those acts.

§ 697.2 Definitions.

In addition to the definitions in § 600.10 of this chapter, the terms in this part have the following meanings: *Approved TED* means any approved Ted as defined at 50 CFR 217.12.

Atlantic striped bass means members of stocks or populations of the species *Morone saxatilis* found in the waters of the Atlantic Ocean north of Key West, FL.

Block Island Southeast Light means the aid to navigation light located at Southeast Point, Block Island, RI, and defined as follows: Located at 40°09.2'N. lat., 71°33.1'W. long.; is 201 ft (61.3 m) above the water; and is

shown from a brick octagonal tower 67 ft (20.4 m) high attached to a dwelling on the southeast point of Block Island, RI.

BRD means bycatch reduction device.

Certified BRDs means any BRD, as defined in 50 CFR part 622 Appendix D: Specifications for Certified BRDs.

Commercial purposes - means for the purpose of selling or bartering all or part of the fish harvested.

Commission means the Atlantic States Marine Fisheries Commission established under the interstate compact consented to and approved by Congress in Public Laws 77-539 and 81-721.

Continuous transit means that a vessel does not have fishing gear in the water and remains continuously underway while in the EEZ.

Crab trawl means any trawl net that is rigged for fishing and has a mesh size of 3.0 inches (7.62 cm), as measured between the centers of opposite knots when pulled taut.

De minimis state means any state where the landings are so low that the Commission's Fisheries Management Board has exempted that state from some of its regulatory responsibilities under an Interstate Fishery Management Plan.

Directed fishery means any vessel/person fishing for a stock using gear or strategies intended to catch a given target species, group of species, or size class. For the purpose of this regulation, any vessel/person targeting weakfish.

Flynets, for the purpose of this part, means any trawl net, except shrimp trawl nets containing certified BRDs and approved TEDs, when required under 50 CFR 227.72(e)(2), and except trawl nets that comply with the gear restrictions specified at § 648.104 of this chapter for the summer flounder fishery and contain an approved TED, when required under 50 CFR 227.72(e)(2).

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

Montauk Light means the aid to navigation light located at Montauk Point, NY, and defined as follows: Located at 41°04.3'N. lat., 71°51.5'W. long.; is shown from an octagonal, pyramidal tower, 108 ft (32.9 m) high; and has a covered way to a dwelling.

Point Judith Light means the aid to navigation light located at Point Judith, RI, and defined as follows: Located at 41°21.7'N. lat., 71°28.9'W. long.; is 65 ft (19.8 m) above the water; and is shown from an octagonal tower 51 ft (15.5 m) high.

Retain means to fail to return Atlantic striped bass or weakfish to the sea immediately after the hook has been removed or the fish has otherwise been released from the capture gear.

Shrimp trawl net means any trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each trawl net, as defined at § 622.2 of this chapter, that is rigged for fishing and has a headrope length longer than 16.0 ft (4.9 m).

TED (turtle excluder device) means a device designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Weakfish means members of the stock or population of the species *Cynoscion regalis*, found along the Atlantic Coast from southern Florida to Massachusetts Bay.

§ 697.3 Relation to the Magnuson-Stevens Act.

The provisions of sections 307 through 311 of the Magnuson-Stevens 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-Stevens Act.

§ 697.4 Relation to state law.

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.

§ 697.5 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, permit sanctions, seizures, and forfeitures under the Atlantic Striped Bass Act and the Atlantic Coastal Fisheries Cooperative Management 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 the regulations in this part.

§ 697.7 Prohibitions.

(a) Atlantic Coast weakfish fishery. In addition to the prohibitions set forth in § 600.725 of this chapter, the following prohibitions apply. It is unlawful for any person to do any of the following:

(1) Fish for, harvest, or possess 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) from the EEZ.

(2) Retain any weakfish less than 12 inches (30.5 cm) in total length taken in or from the EEZ.

(3) Fish for weakfish in the EEZ with a minimum mesh size less than 3 1/4-inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) 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.

(4) To possess more than 150 lb (67 kg) of weakfish during any one day or trip, whichever is longer, in the EEZ when using a mesh size less than 3 1/4-inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or 3 3/4-inch (9.5 cm) diamond stretch mesh for finfish trawls and 2 7/8-inch (7.3 cm) stretch mesh for gillnets.

(5) To fish using a flynet in the EEZ off North Carolina in the area bounded as follows:

(i) On the north by a straight line connecting points 35°10.8'N. lat., 75°29.2'W. long. (3 nm off Cape Hatteras) and 35°03.5'N. lat., 75°11.8'W. long. (20 nm off Cape Hatteras).

(ii) The east by a straight line connecting points 35°03.5'N. lat., 75°11.8'W. long. (20 nm off Cape Hatteras) and 33°21.1'N. lat., 77°57.5'W. long., (about 30 nm off Cape Fear on the

extension of the North Carolina/South Carolina state line into the EEZ).

(iii) On the south by a straight line connecting points 33°21.1'N. lat., 77°57.5'W. long., and 33°48.8'N. lat., 78°29.7'W. long. (3 nm off Little River Inlet on the North Carolina/South Carolina state line).

(iv) On the west by state waters.

(6) To possess any weakfish in the closed area of the EEZ, described in Paragraph (a)(5) of this section, when fishing with shrimp trawls or crab trawls.

(7) To land weakfish for commercial purposes caught in the EEZ in any state other than Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, or North Carolina.

(b) *Atlantic striped bass fishery*. In addition to the prohibitions set forth in § 600.725, the following prohibitions apply. It is unlawful for any person to do any of the following:

(1) Fish for Atlantic striped bass in the EEZ.

(2) Harvest any Atlantic striped bass from the EEZ.

(3) Possess any Atlantic striped bass in or from the EEZ, except for the following area: The EEZ within Block Island Sound, north of a line connecting Montauk Light, Montauk Point, NY, and Block Island Southeast Light, Block Island, RI; and west of a line connecting Point Judith Light, Point Judith, RI, and Block Island Southeast Light, Block Island, RI. Within this area, possession of Atlantic striped bass is permitted, provided no fishing takes place from the vessel while in the EEZ and the vessel is in continuous transit.

(4) Retain any Atlantic striped bass taken in or from the EEZ.

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