

ensure that the review is complete and is based on the best available information. In addition, NMFS is soliciting information and comments concerning other areas in the U.S. Caribbean where the designation of critical habitat for listed sea turtles may be warranted. We request that the information and comments be accompanied by (1) supporting documentation such as maps, biological references or reprints of pertinent publications and (2) the person's name, address and association, institution, or business that the person represents.

Dated: February 10, 1997.

Rolland A. Schmitt, Jr.,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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50 CFR Part 697

[Docket No. 950605148-7018-04; I.D. 091696A]

RIN 0648-AH58

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: Proposed rule; request for comments.

SUMMARY: NMFS requests public comment on proposed regulations for the exclusive economic zone (EEZ) offshore from Maine through Florida that would implement 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 for fisheries using smaller mesh sizes for any one day or trip, whichever is longer; a prohibition on the use of flynets in the EEZ south of Cape Hatteras; 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, North Carolina, or Florida. In addition, weakfish fishing must be in accordance with a state's laws if the state's regulations are more restrictive than the Federal regulations. The intent of the proposed 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: Written comments must be received on or before March 17, 1997.

ADDRESSES: Comments on the proposed rule should be sent to, and copies of supporting documents, including a Draft Supplemental Environmental Impact Statement and Regulatory Impact Review (DSEIS/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. NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding these proposed regulations. The dates and locations of public hearings will be announced by notice in the Federal Register at least 2 weeks prior to the public hearing dates.

FOR FURTHER INFORMATION CONTACT: Thomas Meyer/Paul Perra, 301-427-2014.

SUPPLEMENTARY INFORMATION:

Background

Section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5101 *et seq.*, states that, in the absence of an approved and implemented Fishery Management Plan (FMP) under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson-Stevens Act), 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 3-200 nautical miles (5.6-370.6 km)). These regulations must be (1) compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Atlantic States Marine Fisheries Commission (Commission), and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act (16 U.S.C. 1851).

The Commission adopted a weakfish ISFMP in 1985 and amended the plan in October 1991 and 1994. In 1995, the Commission began development of Amendment 3 to rebuild declining stocks of weakfish. Amendment 3 was adopted by the Commission in 1996. Federal regulations were needed in the EEZ to support the Commission's effort to protect weakfish.

The Mid-Atlantic Fishery Management Council (MAFMC) is the lead Council for developing weakfish regulations in the EEZ. The MAFMC has listed weakfish as a species in need of

management but has not, to date, developed an FMP for the species. The MAFMC has indicated that, because of its heavy workload managing other species, the development of a Federal weakfish plan would not be possible this year. Therefore, Federal actions authorized by the Atlantic Coastal Act remain the most effective means of instituting management measures in the EEZ that will support the Commission's ISFMP for weakfish (Weakfish Plan).

On November 27, 1995, the Secretary, after consultations with the Commission, the New England, Mid-Atlantic, and South Atlantic Fishery Management Councils, and the U.S. Fish and Wildlife Service implemented a final rule (published at 60 FR 58246) to impose a moratorium on fishing for weakfish in the EEZ in accordance with the Atlantic Coastal Act. However, the rule was invalidated by the U.S. Federal District Court, Norfolk, VA, on February 16, 1996. The basis for the court's decision was that Amendment 2 to the Weakfish Plan did not contain recommendations to the Secretary on management in the EEZ and, therefore, cannot be considered a valid FMP under the Atlantic Coastal Act. The moratorium was not enforced as of February 16, 1996, and the regulations implementing the moratorium were formally suspended on July 3, 1996 (61 FR 34746). The Atlantic Coastal Act was amended on October 11, 1996, by section 404 of the Sustainable Fisheries Act. The revision removed the requirement that a Commission Coastal Fishery Management Plan must contain a recommendation to the Secretary on management in the EEZ.

Amendment 3 to the Weakfish Plan was adopted by the Commission in May 1996 and included the Commission's recommendation that the Secretary take the following steps by October 1, 1996, concerning management of weakfish in the EEZ:

1. Require a minimum weakfish size of 12 inches (30.5 cm) total length.
2. Require that weakfish harvested in the EEZ be landed in accordance with the landing laws of the state in which they are landed, with the exception that weakfish caught in the EEZ may not be landed in a "de minimis" state (a state where the landings are so low that the Commission's Weakfish Fisheries Management Board has exempted that state from some of its regulatory responsibilities under the Weakfish Plan).

3. Require minimum mesh sizes in the EEZ, consistent with a 12-inch (30.5-cm) minimum fish size. Non-directed fisheries using smaller mesh sizes may possess no more than 150 lb of weakfish

during any one day or trip, whichever is longer.

4. Require the use of flynets in EEZ waters south of Cape Hatteras to be consistent with adjacent state regulations.

Purpose

Weakfish (*Cynoscion regalis*), a member of the family Sciaenidae, is considered a single stock along the Atlantic coast, ranging from Maine to Florida. The species is most abundant in shallow coastal and estuarine waters from North Carolina to New York. The center of weakfish abundance in the winter ranges from North Carolina southward and in the summer from Delaware northward. Weakfish are taken both in directed fisheries and as a bycatch in other fisheries.

Weakfish populations are overfished; total landings have declined yearly, from 35,667 mt (78.6 million lb) in 1980 to 3,573 mt (7.9 million lb) in 1994, before increasing slightly in 1995 to 3,933 mt (8.7 million lb).

The fishing mortality rate (F) for age 2–7+ weakfish averaged 1.90 for the period 1991–1994, (i.e., 80 percent of the population was harvested each year), which is about four times the rate that would protect and rebuild the stock. In Amendment 3 to the Weakfish Plan, the Commission recommended an F rate of 0.50 to rebuild the stock. Since 1979, F has only been below 1.0 twice; in 1979, the F rate was 0.40, and in 1982, the F rate was 0.87.

Concurrent with high fishing mortality, in recent years the weakfish stock has exhibited a reduction in spawning stock biomass. In 1994 and 1995, only 5 percent of the population achieved spawning age, far short of the 20 percent or greater needed to sustain and rebuild the stock. There has been a severe reduction in the number of age classes (age 4 or older) in the population since 1989. Recruitment studies conducted at different areas along the coast show juvenile recruitment in 1993 to be at its lowest levels since these studies were begun; 1994 showed a slight increase, while 1995 showed a nine-fold increase. Therefore, recruitment to the stock remains variable and fluctuating.

The proposed rule would implement a minimum-size limit of 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 the EEZ; require 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 gillnets; require that fisheries using smaller mesh sizes possess no more than 150 lb of weakfish bycatch during any one day or trip, whichever is longer; prohibit the use of flynets in the EEZ south of Cape Hatteras; and require 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, North Carolina, or Florida. In addition, weakfish fishing must be in accordance with a state's laws if the state's regulations are more restrictive than the Federal regulations.

In Amendment 3, the Commission recommended that the Secretary prohibit flynets south of Cape Hatteras. The flynet is a relatively recent development, which has progressed from a "high rise" type shrimp net of the late 1960s to its present form. Flynets are modified trawl nets with large mesh in the wings and mid-section of the trawl. They have short, smaller-mesh tail bags and usually extra floatation devices (floats, kites, or paravanes) on the headrope. Flynets are further described as modified trawl nets with any part of the body (belly) section having more than 10 continuous meshes of 7-inch (17.8 cm) or greater stretched mesh (webbing) behind the bottom and top line with tailbags less than 15 ft (4.6 m) in length. However, since other trawl nets can be modified in numerous ways to mimic the fishing ability of flynets, for the purpose of this regulation, it is easier to describe what flynets are not. Flynets are not shrimp trawls with certified BRDs or trawl nets that comply with gear restrictions specified at 50 CFR 648.104 for the summer flounder fishery and contain an approved TED as defined at 50 CFR 217.12. These two trawl net types are the only trawls allowed in the area closed to flynets. The South Atlantic Fishery Management Council (SAFMC) has submitted Amendment 2 (Bycatch Reduction) to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (Shrimp Plan) for Secretarial review. A proposed rule was published on January 6, 1997 (62 FR 720), that would implement a program to certify specific types of BRDs for shrimp trawls. Since regulations for Amendment 2 to the Shrimp Plan are still in the proposed rule stage, this weakfish proposed rule restates the requirements for BRDs that appeared in the Shrimp Plan Amendment 2 proposed rule. If Amendment 2 to the Shrimp Plan is approved, and the final rule for the Shrimp Plan is published,

the weakfish final rule will cite the relevant part and section in the Code of Federal Regulations containing the Shrimp Plan regulations and will not include language that describes each certified BRD in the weakfish regulations.

The two differences between what the Commission recommended in Amendment 3 for regulations in the EEZ and the proposed Federal regulations are: (1) Weakfish harvested for commercial purposes in the EEZ may be landed only in jurisdictions that are declared participants in the Commission's Weakfish Plan; this would prohibit weakfish caught in the EEZ from being landed in the states of Maine, New Hampshire, Pennsylvania, or in Washington, DC. These states and Washington, DC, in addition to South Carolina and Georgia, which were granted *de minimis* status from the Commission under Amendment 3 to the Weakfish Plan, represent the six jurisdictions in which weakfish caught in the EEZ may not be landed.

This action supports the Commission's Weakfish Plan by not allowing any "loopholes" in the ability of the plan to control the commercial fishery. Under the Weakfish Plan, individual states control commercial landings by the use of seasons and/or gear. *De minimis* states and states that are not declared participants in the Weakfish Plan are relieved of these seasonal and/or gear and reporting requirements; lack of these requirements could lead to uncontrolled commercial landings of EEZ-caught weakfish in these states. These landings would undermine the individual state's ability and the Weakfish Plan's ability to control the commercial fishery. It is unlikely that weakfish caught commercially in the EEZ would be transported for sale to the states along the Gulf of Mexico or any foreign port but, in the event this occurs, NMFS would act to curtail this activity; and (2) if a state has implemented more restrictive weakfish conservation measures in state waters than those proposed for the EEZ, the state's more restrictive regulations will apply to weakfish caught in the EEZ when they are landed in that state.

The proposed rule would provide an initial step to protect the stock and supports the efforts by the Commission and its member states to rebuild the stock; it would provide protection for young Atlantic Coast weakfish in the EEZ, especially south of Cape Hatteras, by implementing supportive measures that match state regulations as requested by the Commission's Weakfish Plan (North Carolina does not allow

flynetting in the EEZ south of Cape Hatteras but can only enforce this regulation in the EEZ on flynetters registered in the State of North Carolina); it would help states to enforce their weakfish regulations by only allowing the landing of commercially caught weakfish in the above-mentioned states that have commercial seasons and only during their commercial weakfish fishing season; it allows state regulations that are more restrictive than those proposed for the EEZ to apply to weakfish caught in the EEZ when they are landed in that state; and it is consistent with the national standards of the Magnuson-Stevens Act.

Additional background for this rule is available and contained in a DSEIS/RIR prepared by NMFS for this rule (see ADDRESSES).

Classification

The Assistant Administrator for Fisheries has preliminarily determined that these actions are compatible with the effective implementation of the Commission's coastal fishery management plan, and consistent with the national standards of the Magnuson-Stevens Act. The Secretary, before making the final determinations, will take 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 DSEIS/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 at all. NMFS determined that, among the alternatives analyzed, the Federal measures discussed above are the most appropriate measures to support the Commission's Weakfish Plan. NMFS is interested in comments on the alternatives examined in the DSEIS/RIR and any other appropriate measures to achieve the stated goal.

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 as follows:

I certify that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would implement a minimum size limit of 12 inches (total length); a minimum mesh sizes in the EEZ of 3 1/4-inch square stretch mesh or 3 3/4-inch

diamond stretch mesh for trawls, and 2 7/8-inch stretch mesh for gill nets; a bycatch possession limit of 150 lb for fisheries using smaller mesh sizes for any one day or trip, whichever is longer; a prohibition on the use of flynets in the EEZ south of Cape Hatteras; and a requirement that weakfish harvested commercially in the EEZ be landed only in the following states: Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, and Florida and in accordance with the states' landing laws if their regulations are more restrictive than the EEZ Federal regulations. The intent of the proposed regulations is to provide protection to the overfished stock of weakfish, ensure the effectiveness of state regulations, and to aid in the rebuilding of the stock.

The entire commercial weakfish fishery in the EEZ in 1995 was valued at \$1.2 million. The value had previously ranged from a low of \$240,022 in 1972 to a high of \$3.5 million in 1982 (averaging \$1.7 million for 1972–1994). North Carolina dominated the weakfish commercial catch by harvesting 68 percent of all the weakfish caught in the EEZ in 1993. In the North Carolina fishery, flynet trawls harvest the majority of the fish, but the number of boats has declined from 20–25 to 11–15 over the last few years. Likewise, the number of gillnet boats has declined from over 70 to approximately 10–15 boats. These declines have occurred primarily due to the lack of weakfish as the fishermen have directed on other species such as dog fish sharks, flounder, and croaker. This proposed rule will result in these 11–15 flynet boats to either move shoreward to state waters or directing their fishing effort on other species in the EEZ, which will mitigate any economic effects of this rule. The greatest threat to small business entities is the lack of meaningful weakfish regulations that will aid in the rebuilding of the weakfish stock. This proposed rule will allow the rebuilding of the weakfish stock.

As a result, a regulatory flexibility analysis was not prepared. Further information is available in the DSEIS/RIR (See ADDRESSES).

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

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: February 10, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter VI, part 697, is proposed to be 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. 5101 *et seq.*; 16 U.S.C. 1851 note.

§ 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:

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 of the following BRDs: Extended Funnel BRD, Expanded Mesh BRD, and Fisheye BRD.

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.

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.

Expanded mesh BRD means a BRD that is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.

Extended funnel BRD means a BRD that consists of an extension with large-mesh webbing in the center (the large-mesh escape section) and small-mesh webbing on each end, held open by a semi-rigid hoop. A funnel of small-mesh webbing is placed inside the extension to form a passage for shrimp to the codend. It also creates an area of reduced water flow to allow for fish escapement through the large mesh. One side of the funnel is extended vertically to form a lead panel and area of reduced water flow. There are two sizes of extended funnel BRDs, a standard size and an inshore size for small trawls.

(1) *Minimum construction and installation requirements for standard size*—(i) *Extension material*. The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1 5/8-inch (4.13 cm), No. 30 stretched mesh, nylon webbing. The front section is 120 meshes around by 6 1/2 meshes deep. The back section is 120 meshes around by 23 meshes deep.

(ii) *Large-mesh escape section*. The large-mesh escape section is constructed of 8 to 10-inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) in length by 95 inches (241.3 cm) in circumference. The leading edge is attached to the 6 1/2-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(iii) *Funnel*. The funnel is constructed of 1 1/2-inch (3.81 cm), stretched mesh, No. 30 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 34 to 36 inches (86.4 to 91.4 cm) long and the opposite side of the funnel extends an additional 22 to 24 inches (55.9 to 61.0 cm). The leading edge of the funnel is attached three meshes forward of the leading edge of the large-mesh escape section. Seven meshes of the short side of the funnel are attached to the back section of extension webbing on the top and bottom eight meshes back from the trailing edge of the large-mesh escape section. The extended side of the funnel is attached on a slight angle to the top and bottom of the back extension webbing.

(iv) *Semi-rigid hoop*. A 30-inch (76.2 cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a 3/8-inch (9.53 mm)

micropress sleeve, is installed five meshes behind the trailing edge of the large-mesh escape section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop; that is, 30 meshes must be evenly attached to each quadrant.

(v) *Installation*. The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph (1)(ii) of this definition, must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

(2) *Minimum construction and installation requirements for inshore size*—(i) *Extension material*. The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1 3/8-inch (3.5 cm), No. 18 stretched mesh, nylon webbing. The front section is 120 meshes around by 6 1/2 meshes deep. The back section is 120 meshes around by 23 meshes deep.

(ii) *Large-mesh escape section*. The large-mesh escape section is constructed of 8 to 10-inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) by 75 inches (190.5 cm) in circumference. The leading edge is attached to the 6 1/2-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(iii) *Funnel*. The funnel is constructed of 1 3/8-inch (3.5 cm), stretched mesh, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches (76.2 to 81.3 cm) long and the opposite side of the funnel extends an additional 20 to 22 inches (50.8 to 55.9 cm). The leading edge of the funnel is attached three meshes forward of the leading edge of the large-mesh escape section. Seven meshes of the short side of the funnel are attached to the back section of extension webbing on the top and bottom eight meshes back from the trailing edge of the large mesh section. The extended side of the funnel is attached on a slight angle to the top and bottom of the back extension webbing.

(iv) *Semi-rigid hoop*. A 24-inch (61.0 cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a 3/8-inch (9.53 mm) micropress sleeve, is installed five meshes behind the trailing edge of the large-mesh section. The extension webbing must be laced to the ring around the entire circumference and

must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(v) *Installation*. The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph (1)(iii) of this definition, must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

Fish, when used as a verb, for the purposes of this part, means any activity that involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support or, or in preparation for, any activity described in paragraph (1), (2), or (3) of this definition.

Fisheye BRD means a BRD that is a cone-shaped rigid frame constructed from aluminum or steel rod of at least 1/4-inch (0.64 cm) diameter, which is inserted into the codend to form an escape opening. Fisheyes of several different shapes and sizes have been tested in different positions in the codend. The fisheye has a minimum opening dimension of 5 inches (12.7 cm) and a minimum total opening area of 36 square inches (91.4 square cm). The fisheye must be installed in the codend of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no farther forward than 11 ft (3.4 m) from the codend tie-off rings.

Flynets, for the purpose of this part, means any trawl net, except shrimp trawl nets containing certified BRDs, 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, as defined at § 217.12 of this title.

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 try net 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.

Try net, also called test net, means a net pulled for brief periods by a shrimp trawler to test for shrimp concentrations or determine fishing conditions (for example, presence or absence of bottom debris, jellyfish, bycatch, seagrasses, etc.).

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 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) Fail to return to the water immediately, with the least possible injury, any weakfish less than 12 inches (30.5 cm) in total length taken within 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 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.

(4) To possess more than 150 lb 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 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.

(5) To fish for weakfish using a flynet in the EEZ in the area south of the line defined by a point beginning at 35°15.3'N. lat., 75°27.3'W. long. (3 nm east of Cape Hatteras Light) and extending due eastward (090 degrees true) 197 nm.

(6) 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, Washington DC, Virginia, North Carolina, or Florida.

(b) *Atlantic striped bass 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 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) Fail to return to the water immediately, with the least possible injury, any Atlantic striped bass taken within the EEZ.

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