

disclosed and established cost accounting practices.

**Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns (DATE)**

(a) *The Contractor, in connection with this contract, shall—*

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; and 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract, as indicated in Part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 9903.202–1 through 9903.202–5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 9903.201–6(c) that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period,

from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in Parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$650,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of Clause)

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 697**

[Docket No. 070516106–7106–01; I.D. 041907A]

**RIN 0648–AV44**

**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 300 lb (135

kg) to no more than 150 lb (67 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 the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for weakfish, as set forth in the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act).

**DATES:** Written comments must be received on or before July 16, 2007.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-Mail: [Weakfish.150@noaa.gov](mailto:Weakfish.150@noaa.gov). Include in the subject line the following identifier: "Comments on Weakfish Bycatch 150."

- Federal e-rulemaking portal: <http://www.regulations.gov>

- Mail: Chris Moore, Chief, Partnerships and Communications Division (SF8), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Suite 13317, Silver Spring, MD 20910. Mark the outside of the envelope: "Comments on Weakfish Bycatch 150 Proposed Rule."

- Fax: (301) 713–0596

**FOR FURTHER INFORMATION CONTACT:** Tom Meyer, 301–713–2334.

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS is proposing to modify weakfish conservation measures in the EEZ under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5103, which states 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 February 1, 2007, the Commission's Weakfish Management Board (Board) approved Addendum II to Amendment 4 to the ISFMP for Weakfish. Under the Addendum, the states of Massachusetts through North Carolina will be required to implement a six fish creel limit at their current size

limit for the recreational fishery. For the commercial fishery, the Addendum reduces the allowable bycatch limit from 300 pounds to 150 pounds per day or trip. There is currently a bycatch limit of no more than 300 pounds in the EEZ. Addendum II also establishes two management triggers that will require the Board to reconsider the management program if met: (1) when the coastwide commercial landings reach 2.99 million pounds (80 percent of the mean from 2000-2004), and (2) when any state's landings exceed its five year average by more than 25 percent. States are required to fully implement the addendum measures by October 29, 2007. The Board's action was taken in response to a significant decline in stock abundance and increasing total mortality since 1999. As a result of weakfish's depleted stock size, the Board is required under Amendment 4 to adjust the management program to help rebuild spawning stock biomass. This issue is compounded by the fact that natural mortality, rather than fishing mortality, has been indicated as the lead cause for stock decline in the Commission's October 25, 2006, Fishery Management Plan Review for the Weakfish Fishery.

#### Status of the Weakfish Fishery

The most recent stock assessment (December 2006) was not upheld by an external peer review panel. Therefore, there is uncertainty in the stock status of weakfish. Analyses do indicate that biomass is low and that overfishing is not the cause. The Weakfish Technical Committee, in response to the peer review panel's report, supported five conclusions based on significant evidence that the Board has accepted for management use: (1) The stock is declining; (2) total mortality is increasing; (3) there is not much evidence of overfishing; (4) something other than fishing mortality is causing the decline in the stock; and (5) there is a strong chance that regulating the fishery will not, in itself, reverse stock decline.

#### Proposed Action

NMFS believes that the proposed decrease of the incidental catch allowance for weakfish is warranted even given the conclusions of the Weakfish Technical Committee. Pursuant to the Atlantic Coastal Act, 16 U.S.C. 5103, the Secretary has a statutory obligation to support the Commission's Interstate Fishery Management Program. The Commission recently adopted Addendum II to Amendment 4, which included a decrease in the commercial bycatch

limit. The proposed rule would implement this decrease, consistent with Addendum II, allowing non-directed fisheries using a mesh size less than 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 gillnets to possess no more than 150 lb (67 kg) of weakfish during any one day or trip, whichever is longer in duration; a decrease of 150 lb (67 kg) per day or trip from the current Federal regulation of 300 lb (135 kg) at § 697.7(a)(4)). This action supports the Commission's Interstate Fishery Management Program by being compatible with the effective implementation of the Commission's Weakfish Plan, is 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), authorizes the Secretary to implement regulations in the EEZ in the absence of a Magnuson-Stevens Act FMP. Such regulations must be compatible with the effective implementation of a Commission's ISFMP, and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries has preliminarily determined that this 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. The Secretary, before making the final determination, will take into account data, views, and comments received during the comment period.

Preliminary review of the proposed action in relation to NOAA Administrative Order (NAO) 216 6, including the criteria used to determine significance, suggests that the proposed action would not have a significant effect, individually or cumulatively on the human environment. Furthermore, NMFS has preliminarily determined that the proposed action is categorically excluded from the requirement to prepare an Environmental Impact Statement or an EA in accordance with 5.05(b) of NAO 216 6, because a prior NEPA document (EA dated August 2003) analyzed the impacts of landing 150 pounds versus 300 pounds of

weakfish bycatch. That document found that neither the 150 lb. nor the 300 lb. bycatch limit created a significant impact on the quality of human environment. Although the stock's downward trend is apparent now versus when analyzed in 2003, that trend would not alter the environmental analyses or conclusions rendered in 2003. Specifically, fishing effort (number of tows) and practices (where fished) would remain the same. Nor would the number of weakfish actually caught and killed increase or decrease, because those weakfish that are not retained as incidental catch are discarded as bycatch. The action would, however, continue regulatory uniformity in state and Federal waters, which, as was also the case in 2003, is beneficial insofar as incongruous regulations can confuse stakeholders and complicate management. Accordingly, there would be no significant impact on the physical or human environment resulting from this action and the need to perform further analysis is categorically excluded pursuant to Section 5.05(b) of NAO 216 6.

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.

NMFS prepared a regulatory flexibility analysis (RFA) that described the economic impacts on small entities for a similar action described in the final rule to increase the permitted non-directed incidental catch of weakfish from 150 lb (67 kg) to no more than 300 lb (135 kg) per day or trip (68 FR 56789, October 2, 2003). The RFA found that the economic impacts on small entities were not significant and would be at most a positive impact of \$1,600 for the entire fishery for the entire year.

This proposed action would return the allowable incidental catch back to 150 lb (67 kg) from the current 300 lb (135 kg) level. NMFS does not have an estimate of the number of small entities to which the proposed action would apply because vessels most likely to be impacted are not required to hold a permit to fish for weakfish in the EEZ. The action would only apply to those fishermen who capture weakfish incidentally (as bycatch) while fishing for other species using a smaller mesh size than is allowed in the directed weakfish fishery. This proposed action would not alter current fishing practices or effort, or increase or decrease the number of weakfish caught because weakfish that are not retained as

incidental catch are discarded as bycatch. However, fishermen who catch weakfish incidentally would be able to sell only 150 lb. of weakfish retained per trip rather than 300 lb. The price per pound of weakfish is \$0.795 per pound, using the most recent 2005 data. The economic analysis provided in the 2003 rule explains the impact, now a negative impact, that would accrue to the fishermen as a result of the proposed rule. (68 FR 56789, October 2, 2003). Using the updated price per pound of weakfish, that negative impact would be at most \$2072 for the whole fishery. NMFS does not consider the economic impact to be significant because the incidental weakfish catch is only a small portion of the entire catch and resulting revenue of these vessels. Using 2005 data, the average annual revenue of those vessels was \$243,000, so the impact would be less than 1 percent. Therefore, NMFS has preliminarily determined that this proposed rule, if

adopted, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

**List of Subjects in 50 CFR Part 697**

Fisheries, Fishing.

Dated: June 8, 2007.

**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, paragraph (a)(4) is revised to read as follows:

**§ 697.7 Prohibitions.**

(a) \* \* \*

(4) 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 (9.5cm) diamond stretch mesh for finfish trawls and 2 7/8-inch (7.3 cm) stretch mesh for gillnets.

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