

of weakfish. Federal regulations are 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, to date, not developed an FMP for the species. NMFS consulted with the MAFMC to determine if the development of an FMP for weakfish was possible in the immediate future. The MAFMC stated that because of its heavy workload on other species, it would not be possible this year. Therefore, Federal actions authorized by the ACFCMA remain the most effective means to institute management measures in the EEZ that will support the Commission's Plan for weakfish.

Purpose

Weakfish (*Cynoscion regalis*), a member of the family Scianidae, 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 and are in a continuing serious decline. Total landings have declined from 35,667 mt (80.0 million lb) in 1980 to 3,628 mt (8.0 million lb) in 1993. The fishing mortality rate (F) for weakfish averaged 1.26 for the period 1991–1993, (i.e., 64 percent of the population was harvested each year), and only 4 percent of the population achieved spawning age. The F of 1.26 is about three times the rate that should be applied to protect and rebuild the stock. Since 1987, F has remained extremely high and has ranged from 1.087 to 1.948.

Concurrent with high fishing mortality, in recent years the weakfish stock has exhibited a reduction in spawning stock biomass, and a severe reduction in older fish (age 4 or older) taken. Ninety-nine percent of the 1993 commercial catch consisted of age 3 or younger fish. Recruitment to the stock has declined by 43 percent since 1990; in 1993 recruitment values are indicative of recruitment failure. Also, studies conducted at different areas along the coast show juvenile recruitment at its lowest levels since these studies were begun.

The proposed rule would prohibit the harvest (catch and retention) of

weakfish from the Atlantic coast EEZ. The proposal provides the strongest possible conservation measure, is easy to understand and enforce, and is in the best long-term economic interests of both commercial and recreational fishermen. It eliminates any claim that weakfish were caught in the EEZ, when fishermen might otherwise have caught fish illegally in state waters. Enforcement of the prohibition is straightforward, because possession of weakfish on board a vessel in the EEZ would be a violation of the regulation. The prohibition also includes possession of weakfish taken as incidental catch (bycatch) while fishing for other species, since such bycatch must be released to the water as soon as possible. It allows for the development of a stock rebuilding program and, therefore, resumption of the fishery in the future.

Classification

This proposed rule is published under the authority of the ACFCMA. Paragraphs (A) and (B) of section 804(b)(1) authorizes the Secretary to implement regulations in the EEZ in the absence of a Magnuson Act FMP. 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 Act. The Assistant Administrator for Fisheries has preliminarily determined that these actions are consistent with the national standards. The Secretary, before making the final determinations, will take into account the data, views, and comments received during the comment period.

NMFS prepared a DEIS/RIR for this rule, which is available (see ADDRESSES). Five different alternatives to regulate the harvest of weakfish in the EEZ were examined. The alternative to prohibit the harvest and possession of weakfish in the EEZ provided the greatest biological gains with only short-term economic loss. This alternative also provided the best approach to reduce law enforcement loopholes. The condition of the stock necessitates that regulations be placed on the weakfish harvest in the EEZ to supplement the states regulations and begin the rebuilding of this overfished stock. Applying state regulations in the EEZ was considered, as well as establishing separate specific regulations for the EEZ, or doing nothing at all.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not

have a significant economic impact on a substantial number of small entities. The closure of the EEZ will have minimal impact on recreational fishing, since recreational catch accounted for only 3 percent of the total catch in the EEZ in 1993. The North Carolina commercial fishery was used to analyze the impact of this proposal on the commercial fishery, since North Carolina accounted for 68 percent of the weakfish caught commercially in the EEZ in 1993. In North Carolina, the fly net trawl fishery, which consists of 11–15 boats, harvests the majority of the fish. This proposed rule will result in these boats either moving shoreward to state waters or directing their fishing effort on other species such as dog fish sharks, flounder, croaker, squid, or striped bass. This switch to fishing in state waters or to targeting other species in the EEZ will mitigate, to a great extent, any economic effects of this rule. Therefore, the proposed rule should not have a significant economic impact on small entities. As a result, a regulatory flexibility analysis was not prepared. Further information is available in the DEIS/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: June 13, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

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

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Subpart A—Atlantic Coast Weakfish Fishery

Sec.

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

Subpart B—[Reserved]

Authority: 16 U.S.C. 5101 *et seq.*, unless otherwise noted.

§ 697.1 Purpose and scope.

The regulations in this part implement section 804(b) of the Atlantic Coastal Fisheries Cooperative