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**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08-26, adopted March 12, 2008, and released March 14, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (800) 378-3160, or via the company's Web site, <http://www.bcpweb.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506 (c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

**PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Hugo, Channel 286A.

3. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 242A and adding Channel 249A at Ludington.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 622 and 697**

**[Docket No. 0612242961-7381-01]**

**RIN 0648-AT13**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coast Red Drum Fishery off the Atlantic States; Transfer of Management Authority**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to repeal the Atlantic Coast Red Drum Fishery Management Plan (FMP) and to transfer the management authority of Atlantic red drum in the exclusive economic zone (EEZ) from the South Atlantic Fishery Management Council (South Atlantic Council), in cooperation with the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council), under the Magnuson-Stevens Conservation and Management Act (Magnuson-Stevens Act) to the Atlantic States Marine Fisheries Commission (Commission) under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), as requested by the Councils and the Commission. The intent of this action is to enhance the effectiveness and efficiency of managing Atlantic red drum.

**DATES:** Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on May 5, 2008.

**ADDRESSES:** You may submit comments, identified by "0648-AT13", by any one of the following methods:

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

- Fax: 727-824-5308; Attention: Kate Michie.

- Mail: Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the environmental assessment, which describes the impacts of the transfer of management authority, may be obtained from Kate Michie at the address above or by e-mail at: [Kate.Michie@noaa.gov](mailto:Kate.Michie@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, telephone: 727-824-5305, fax: 727-824-5308, e-mail: [Kate.Michie@noaa.gov](mailto:Kate.Michie@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Atlantic red drum fishery off the South Atlantic and Mid-Atlantic coastal states is currently managed under two separate FMPs. Atlantic red drum located in the EEZ are managed under the Atlantic Coast Red Drum FMP prepared by the South Atlantic Council, in cooperation with the Mid-Atlantic Council (Council FMP), and implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. The Council FMP prohibits harvest or possession of red drum in the South Atlantic and Mid-Atlantic EEZ. Atlantic red drum located in state waters are managed under the Interstate Fishery Management Plan (ISFMP) for Red Drum (Commission FMP) by the Atlantic coast states (New Jersey through Florida) and the Atlantic States Marine Fisheries Commission. The Commission was established under the Atlantic States Marine Fisheries Commission Compact, an interstate compact approved by Congress in 1942. This proposed rule would repeal the Council FMP and implementing regulations issued under the Magnuson-Stevens Act and replace them with

substantially identical regulations under the Atlantic Coastal Act, to the Commission under the Atlantic Coastal Act. The Atlantic Coastal Act allows the Federal government to better coordinate its management practices with the states via the Commission process. The repeal of the Council FMP would occur at the same time as this rule is implemented.

#### Statutory Authority

Section 803(b) of the Atlantic Coastal Act, 16 U.S.C. 5101 *et seq.*, states that in the absence of an approved and implemented FMP under the 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, which in this case is from 3 to 200 nautical miles (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. Regulations may include measures recommended by the Commission to the Secretary that are necessary to support the provisions of the Commission FMP.

#### Purpose and Need for the Transfer of Management Authority

The management of red drum (*Sciaenops ocellatus*) is greatly influenced by the biology of the fish. The younger fish are found primarily in state waters (estuaries and inlets) while the larger fish and schools may be found in either the offshore state waters (shore to 3 nm) or Federal waters (3 to 200 nm offshore). Because of this distribution, juveniles tend to experience higher rates of exploitation than the offshore adult population. According to the most recent stock assessment of Atlantic red drum, conducted in 2000, recruitment of individuals to the spawning stock continues to decline, largely due to excessive fishing mortality on juvenile red drum, predominantly in state waters.

Since most of the day-to-day management and all harvest of red drum takes place in state waters, the South Atlantic Council, the Mid-Atlantic Council, and the Commission have requested that Atlantic red drum in the South Atlantic and Mid-Atlantic EEZ be managed under the Atlantic Coastal Act instead of under the Magnuson-Stevens Act. Managing Atlantic red drum under a single FMP would minimize management costs and eliminate unnecessary duplication of management efforts.

#### Background

In the early 1980's, Atlantic coastal states realized that significant overfishing of juvenile red drum had been occurring in state waters for some time. At the same time, a purse seine fishery for red drum developed in the Gulf of Mexico EEZ. Although Gulf red drum is a different stock than Atlantic red drum, there was concern that a purse seine fishery might develop in the South Atlantic. Given these conditions, the Commission implemented an ISFMP for Atlantic red drum in 1984. Although this ISFMP addressed overfishing in state waters, it lacked the authority to protect the Atlantic red drum spawning stock in the EEZ.

The South Atlantic Council, in cooperation with the Mid-Atlantic Council, developed the Council FMP in 1990 under the authority of the Magnuson-Stevens Act. The management unit for Atlantic red drum was defined as the population of red drum occurring along the United States Atlantic coast from the Federal boundary, separating the Gulf of Mexico EEZ from the South Atlantic EEZ to the New Jersey/New York line. Regulations implementing the Council FMP (55 FR 47059, November 9, 1990) prohibited the possession or harvest of red drum in this management area.

Objectives of the Council FMP included: (1) Maintaining a spawning stock biomass sufficient to prevent recruitment failure by working cooperatively with the states to provide a 30-percent escapement of juvenile red drum to the spawning stock and control fishing mortality to achieve at least a 30-percent spawning stock biomass per recruit level; (2) providing a flexible management system to address incompatibility and inconsistency among state and Federal regulations which minimizes regulatory delay while retaining substantial Council and public input into management decisions and which can adapt to changes in resource abundance, new scientific information, and changes in fishing patterns among user groups or by area; and (3) promoting cooperative collection of biological, economic, and sociological data required to effectively monitor and assess the status of the red drum resource and evaluate management efforts.

In 1991, the Commission implemented Amendment 1 to their ISFMP for red drum to make it compatible with the Council FMP. Escapement rates of juvenile red drum increased as a result of Amendment 1 to the ISFMP for red drum, however, overall exploitation estimates indicated

that overfishing was still occurring in state waters.

In 1993, the Atlantic Coastal Act was enacted to facilitate coordination of inter-jurisdictional fisheries management (16 U.S.C. 5101 *et seq.*). The Atlantic Coastal Act acknowledges the Commission's authority for preparing and adopting coastal FMPs and facilitates the states' implementation and enforcement of these FMPs in their waters. Under the Atlantic Coastal Act, Federal support is still required for cooperative interstate management. The Commission FMP for Atlantic red drum was adopted under the authority of the Atlantic States Marine Fisheries Compact, originally approved by Congress in 1940.

In 1998, the Secretary approved Amendment 1 to the Council FMP, which identified essential fish habitat and habitat areas of particular concern. In 2000, Amendment 2 to the Council FMP established new proxy reference points for red drum, based on a 40-percent static spawning potential ratio (SPR) of the stock. However, under the Commission FMP, state management measures were still based on an SPR of 30 percent and red drum continued to be overfished. Therefore, to reduce mortality of juvenile red drum in state waters and achieve optimum yield from the stock, the South Atlantic Council's Red Drum Management Committee and the Commission's South Atlantic State-Federal Management Board recommended the Commission implement compatible management measures.

In June 2002, the Commission developed and approved Amendment 2 to the Commission FMP, which among other things, updated the Commission FMP to meet the standards for Commission FMPs under the Atlantic Coastal Act. The management goal of Amendment 2 was to achieve and maintain the optimum yield for the Atlantic red drum fishery, i.e. the amount of harvest U.S. fishermen could take while maintaining the SPR at or above 40 percent. To meet this goal, Amendment 2 required states to implement appropriate bag and size limits. In addition, all states agreed to maintain their current level of harvest restrictions to preclude the establishment of any new commercial fisheries for red drum.

The Commission's Red Drum Plan Review Team examined the status of the Atlantic red drum stock the next year. They found that although escapement of juvenile red drum to the EEZ was increasing (by approximately 15 percent in the southern region and 18 percent in the northern region), it was increasing

by only approximately half of the desired rate of 30 percent. Thus, overfishing of juvenile red drum in state waters was still occurring.

Following implementation of Amendment 2 to the Commission FMP, the Councils determined they had done all they could to protect the Atlantic red drum spawning stock, but lacked the ability to prevent overfishing of juveniles in state waters under the present management structure. As a result, the Mid-Atlantic and South Atlantic Councils requested in letters dated December 9, 2003, and October 26, 2004, respectively, that the Secretary repeal the Council FMP, as authorized under section 304(h) of the Magnuson-Stevens Act, and use the authority provided by the Atlantic Coastal Act to manage red drum in Federal waters of the U.S. Atlantic, with the provision that the current EEZ harvest or possession prohibitions remain in place. The letters stated that the basis for the Councils' requests was that the Commission has an Atlantic red drum FMP that mirrors the Council FMP, and 100 percent of the harvest and most of the day-to-day management of Atlantic red drum takes place in state waters under the Commission's jurisdiction. The letters also stated that consolidating the management of Atlantic red drum under one management authority, namely the Commission, would minimize costs and avoid unnecessary duplication as mandated by national standard 7 of the Magnuson-Stevens Act, without having any adverse impacts on the red drum resource. This would provide for a more efficient and timely mechanism to address managing Atlantic red drum throughout its range.

The Commission supported these requests in a December 17, 2004, letter to NOAA's Assistant Administrator for Fisheries. The Commission requested that the current EEZ harvest or possession prohibitions remain in place, and that the process of withdrawing the Council FMP and establishing management authority under the Atlantic Coastal Act be a simultaneous action to ensure continuous protection of Atlantic red drum in the EEZ.

#### **Benefits of the Change in Management Authority**

Consistent with national standard 7, this action would reduce management costs and avoid unnecessary duplication of management efforts. Under the Atlantic Coastal Act, the Secretary will maintain the existing harvest or possession prohibitions in the EEZ, and the states, NMFS, and the U.S. Coast Guard will continue to enforce those prohibitions. Repealing the Council

FMP under the Magnuson-Stevens Act and simultaneously implementing comparable regulations under the Commission FMP under the Atlantic Coastal Act, will provide for a more efficient and timely rebuilding of the Atlantic red drum resource.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, I have determined that this proposed rule is consistent with the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

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. The basis for this is as follows:

No small entities, as defined by the Regulatory Flexibility Act, are directly or indirectly impacted by the rule and the rule has no direct or indirect economic costs. Specifically, this rule would transfer management of the Atlantic Red Drum Resource from the South Atlantic Fishery Management Council to the Atlantic States Marine Fisheries Commission (Commission) to reduce management costs by avoiding unnecessary duplication of management efforts. The Commission is the creation of 15 member states and each member state is represented by 3 Commissioners: the director for the state's marine fisheries management agency, a state legislator, and an individual appointed by the governor. Neither the Commission, which is directly affected by this rule, nor its member states are small governmental jurisdictions as defined by the RFA. The transfer would not require the Commission to change its existing Red Drum Fishery Management Plan, nor, in turn, would it require member states to change their existing regulations regarding harvest of red drum by small or large entities. Consequently, this rule would not require the Commission, its member states, or entities operating within the states to change existing practices. The Secretary would maintain the existing prohibitions in the EEZ, and NMFS and the U.S. Coast Guard would continue to enforce those prohibitions.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

#### **List of Subjects**

##### **50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

##### **50 CFR Part 697**

Fisheries, Fishing.

Dated: March 28, 2008.

**James W. Balsiger,**

*Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 622 and 697, are proposed to be amended as follows:

#### **PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows.

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

##### **§ 622.1 [Amended]**

2. In § 622.1, Table 1, the entries for "Atlantic Coast Red Drum FMP" are removed.

##### **§ 622.32 [Amended]**

3. In § 622.32, remove paragraph (b)(3), and redesignate paragraph (b)(4) as paragraph (b)(3); remove newly redesignated paragraph (b)(3)(iii), and redesignate newly redesignated paragraphs (b)(3)(iv) through (vi) as paragraphs (b)(3)(iii) through (v).

##### **§ 622.48 [Amended]**

4. In § 622.48, remove paragraph (k), and redesignate paragraphs (l) and (m) as paragraphs (k) and (l), respectively.

#### **PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT**

5. The authority citation for part 697 continues to read as follows:

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

6. In § 697.2(a), the definition of "Atlantic red drum" is added and the definition of "Regional Administrator" is revised, in alphabetical order, to read as follows:

##### **§ 697.2 Definitions.**

(a) \* \* \*

*Atlantic red drum*, also called redfish, means *Sciaenops ocellatus*, or a part thereof, found in the waters of the Atlantic Ocean off the Atlantic coastal states, to the outer boundary of the EEZ, as specified in § 600.10 of this chapter, from the boundary of the United States and Canada, to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council, as specified in § 600.105(c) of this chapter.

\* \* \* \* \*

*Regional Administrator*, means Regional Administrator, Northeast Region, NMFS, or Regional Administrator, Southeast Region, NMFS, whichever has the applicable jurisdiction, or a respective designee.

\* \* \* \* \*

7. In § 697.7, paragraph (f) is added to read as follows:

§ 697.7 Prohibitions.

\* \* \* \* \*

(f) *Atlantic red drum fishery.* In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Harvest or possess Atlantic red drum in the EEZ south of a line extending in a direction of 115° from true north commencing at a point at 40°29.6' N. lat., 73°54.1' W. long., such point being the intersection of the New Jersey/New York boundary with the 3-nm line denoting the seaward limit of state waters, and north of the

demarcation line between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council described in § 600.105(c) of this chapter.

(2) Fail to release immediately without further harm, all Atlantic red drum caught in the EEZ area described in paragraph (f)(1) of this section.

8. In § 697.22, the introductory text and paragraph (a)(1) are revised to read as follows:

§ 697.22 Exempted fishing.

The Regional Administrator or Director may exempt any person or vessel from the requirements of this part

for the conduct of exempted fishing beneficial to the management of the American lobster, weakfish, Atlantic red drum, Atlantic striped bass, Atlantic sturgeon, or horseshoe crab resource or fishery, pursuant to the provisions of § 600.745 of this chapter.

(a) \* \* \*

(1) Have a detrimental effect on the American lobster, weakfish, Atlantic red drum, Atlantic striped bass, Atlantic sturgeon, or horseshoe crab resource or fishery; or

\* \* \* \* \*

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