

Honorable Diane Munns, Chairman, Iowa Utilities Board. The Honorable Kevin J. Martin is designated to serve as the Chairman of the Joint Conference. The Honorable Michael J. Copps will serve as a participating federal member. Henceforth, a copy of each filing in this proceeding shall be served on each member of the Joint Conference at the addresses listed in appendix A of the Order. Accordingly, *it is ordered* that, pursuant to section 410(b) of the Communications Act of 1934, as amended, 47 U.S.C. 410(b), this Order is adopted.

#### List of Subjects in 47 CFR Part 1

Administrative practices and procedures, Communications common carriers.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02-27977 Filed 11-5-02; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-2694; MM Docket No. 99-322; RM-9762]

#### Radio Broadcasting Services; Ashville and Chillicothe, OH.

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a petition for rule making in this filed by Secret Communications II, L.L.C. this document reallocates Channel 227B from Chillicothe, Ohio, to Ashville, Ohio, and modifies the license of Station WFCB to specify Ashville as its community of license. See 64 FR 60150, November 1, 1999. The reference coordinates for the Channel 227B allotment at Ashville, Ohio, are 39-35-30 and 83-06-38. With this action, the proceeding is terminated.

**DATES:** Effective December 5, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Robert Hayne, Media Bureau  
(202) 418-2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Report and Order* in MM Docket No. 99-322 adopted October 16, 2002, and released October 18, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. The complete text of

this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualixint@aol.com](mailto:qualixint@aol.com).

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

Radio, Radio broadcasting.

Part 73 of the Code of Federal Regulations is amended 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 and 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Ashville, Channel 227B and by removing Channel 227B at Chillicothe.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 02-28162 Filed 11-5-02; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-2695; MM Docket No. 02-119; RM-10435]

#### Radio Broadcasting Services; Clarksdale and Friars Point, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a *Notice of Proposed Rule Making*, 67 FR 39935 (June 11, 2002), this document upgrades Channel 268A, Station WWUN-FM, Clarksdale, Mississippi, to Channel 268C3, changes the community of license of Station WWUN-FM from Clarksdale to Friars Point, Mississippi, and provides Friars Point with its second local aural transmission service. The coordinates for Channel 268C3 at Friars Point are 34-25-30 North Latitude and 90-35-39 West Longitude, with a site restriction 7.8 kilometers (4.8 miles) northeast of Friars Point.

**DATES:** Effective December 2, 2002.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report

and Order, MM Docket No. 02-119, adopted October 9, 2002, and released October 18, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

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

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

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

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 268A at Clarksdale and by adding Channel 268C3 at Friars Point.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 02-28161 Filed 11-5-02; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 020329075-2124-03; I.D. 031902E]

RIN 0648-AP11

#### Fisheries of the Northeastern United States; Magnuson-Stevens Fishery Conservation and Management Act Provisions; Monkfish Fishery

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

**ACTION:** Extension of an emergency interim rule.

**SUMMARY:** NMFS informs the public that the emergency interim rule published

on May 22, 2002, that temporarily amended the fishing mortality rate (F) criteria in the Monkfish Fishery Management Plan (FMP) to be consistent with the best scientific information available, and which implemented the management measures proposed in Framework 1 to the FMP, is extended through April 30, 2003. The purpose of this emergency interim rule extension is to delay further the implementation of restrictive Year-4 default management measures that were scheduled to become effective on May 1, 2002, in the FMP, and to continue measures implemented for the monkfish fishery that are based on the best scientific information.

**DATES:** The expiration date of the emergency interim rule, published May 22, 2002 (67 FR 35928), and effective on May 17, 2002, is extended from November 18, 2002, to April 30, 2003.

**ADDRESSES:** Copies of the small entity compliance guide prepared for the monkfish emergency rule are available from Patricia Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. The guide is also accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Allison Ferreira, Fishery Policy Analyst, (978) 281-9103, fax (978) 281-9135, e-mail [Allison.Ferreira@noaa.gov](mailto:Allison.Ferreira@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The directed monkfish fishery closed on May 1, 2002, due to the implementation of default management measures scheduled to take effect during Year 4 of the FMP (May 1, 2002 - April 30, 2003). The Year-4 default measures were included in the FMP to ensure that the FMP objectives were attained. These measures eliminate the directed monkfish fishery by allocating zero monkfish days-at-sea (DAS), and by allowing only incidental landings of monkfish. The New England and Mid-Atlantic Fishery Management Councils (Councils) developed Framework 1 to the FMP in order to delay the implementation of the Year-4 default management measures for 1 year, until May 1, 2003, and to implement alternative measures for Year-4, since a 3-year review of the status of the monkfish stock determined that the implementation of these restrictive default measures was not necessary. However, following the submission of Framework 1 by the Councils to NMFS, and the publication of a proposed rule, it was determined that Framework 1

was not consistent with the F criteria specified in the FMP. As a result, NMFS disapproved Framework 1 and implemented an emergency interim rule that temporarily amended the F criteria in the FMP to be consistent with the most recent stock assessment (SAW 34; January 2002). In this same regulatory action, NMFS implemented the measures proposed in Framework 1 because, with the amendment of the F criteria in the FMP through the emergency interim rule, the measures were found to be consistent with the best available scientific information.

This action extends the emergency interim measures for 163 days, effective November 19, 2002, through April 30, 2002. Emergency interim measures extended by this action include a target total allowable catch (TAC) of 19,595 metric tons (mt) for the 2002 fishing year (May 1, 2002 - April 30, 2003), with area-specific TACs of 11,674 mt and 7,921 mt for the Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA), respectively; allocation of 40 DAS to limited access monkfish vessels for the 2002 fishing year (May 1, 2002 - April 30, 2003); a revision to the monkfish trip limits in the SFMA to 550 lb (249 kg) (tail weight per DAS) for vessel permit categories A and C, and 450 lb (204 kg) (tail weight per DAS) for vessel permit categories B and D while fishing on a monkfish DAS in the SFMA; and maintenance of all other measures as established for Year 3 of the FMP, including less restrictive incidental catch limits.

**Comments and Responses**

*Comment 1:* NMFS failed to justify the need for emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The argument used by NMFS in justifying the emergency interim rule had no merit.

*Response:* There was substantial justification for the need for the emergency interim rule in the May 22, 2002, **Federal Register** rule implementing this action, and the accompanying environmental assessment (EA). These documents discuss in detail how the emergency interim rule meets the "emergency criteria" and "emergency justification" for determining the appropriateness of section 305 (c) rulemaking outlined in NMFS' Policy Guidelines for the Use of Emergency Rules (Emergency Guidelines) found at 62 FR 44421, *et seq.* (August 21, 1997). In summary, these documents stated that implementing the action through

section 305(c) emergency authority is justifiable because the need to disapprove the framework action and immediately amend the FMP to make it compatible with the best scientific information available only became discoverable after NMFS had the time to fully evaluate the framework action after the public comment period had ended, thus creating a "recently discovered circumstance". In addition, to have delayed the incorporation of the newest science into the FMP and delayed implementation of the action necessary to avoid the default measures would have resulted in substantial, unwarranted and unnecessary economic harm to the industry and would have likely caused wasteful bycatch of monkfish in other fisheries.

*Comment 2:* The emergency action does not contain any analysis showing whether or not it will halt monkfish overfishing this year or allow rebuilding by 2009.

*Response:* NMFS considered all available information regarding the stock biomass level and fishing mortality rate in its decision to implement the emergency interim rule. The fact that stock biomass has increased significantly from 2000 to 2001 in both management areas at current landing levels indicates that the level of fishing mortality resulting from the measures in this action should allow the stock to continue rebuilding. Therefore, there is no evidence that these measures will prevent rebuilding by 2009. Furthermore, the emergency interim rule and this extension postpone the default measures for only 1 year; in the absence of any further management action, the default measures will become effective on May 1, 2003. Both Councils intend to reconsider fully the best available scientific information in the development of revised overfishing definitions in Framework 2, which is scheduled to be implemented at the start of the 2003 fishing year on May 1, 2003.

*Comment 3:* The emergency interim rule does not adequately assess and minimize the impacts on essential fish habitat (EFH). Of particular concern, the EA prepared for the emergency interim rule fails to discuss the impacts of fishing gear on deep sea corals in the continental slope habitats and on emergent epifauna on hard bottom.

*Response:* NMFS disagrees, and notes that the EA prepared for the emergency interim rule contains an EFH assessment as required by the Magnuson-Stevens Act. A comprehensive assessment of the adverse effects of fishing on EFH is not

within the scope and context of this emergency action. Furthermore, the commenter is a party to the litigation that challenged the consideration of EFH in the FMP (*American Oceans Campaign v. Daley* (D.D.C. 2000)). NMFS and the litigants have signed a settlement agreement in that case, and have agreed that EFH will be fully reconsidered in Amendment 2 to the FMP, which is scheduled to be implemented during the fall of 2003. In the meantime, the settlement agreement contemplates that the comprehensive assessment of the adverse effects of fishing on EFH that was included in the New England Council's EFH amendment to the FMP (Amendment 1) may be relied upon. Further, since this action makes no change in effort from the prior year, there should be no change in habitat impacts from those described for the first 3 years of the FMP.

The commenter expressed specific concern about gillnet impacts on deep-sea corals. Such corals are not designated as EFH for any species in waters off of the northeastern United States, so it is not necessary to address impacts to deep-sea corals in order to comply with EFH requirements. Further, according to the NMFS Report on Fishing Gear Effects on Marine Habitats off the Northeastern United States (February 2002), there is very little sink gillnet fishing gear used in waters deeper than 100 m or in submarine canyons, which is where most of such corals exist.

*Comment 4:* The emergency interim rule fails to establish a standardized bycatch reporting methodology, or to minimize bycatch and bycatch mortality as required by the Sustainable Fisheries Act and recent case law. Of particular concern are the capture of deep-sea species such as deep-sea jelly fish, octopi, and sharks as the monkfish fishery extends its range further offshore.

*Response:* The existing data collection system requires vessel operators to provide bycatch data on mandatory Vessel Trip Reports that must be submitted for each fishing trip. In addition, detailed information is collected through the NMFS Observer Program, which deploys trained independent observers on commercial vessels. NMFS is currently increasing the amount of observer coverage on vessels fishing for Northeast multispecies, and this action will likely result in further information concerning monkfish, as well. NMFS agrees that, in the long term, it must improve the collection of bycatch information, but disagrees that the emergency interim

rule should be suspended because it does not address this issue. As stated in the EA for the emergency interim rule, to effectively address bycatch assessment concerns would require a global set of measures applicable to all of the Northeast region's fisheries, since most vessels in the region are involved in a variety of fisheries, even during one fishing trip. NMFS is committed to improving bycatch assessment, as evidenced by the settlement agreement entered into with the other litigatory parties in *Conservation Law Foundation, et al. v. Evans, et al.* It is beyond the scope and context of the emergency interim rule process to require a global system of measures to be established to improve bycatch monitoring, assessment and reduction in only one fishery.

With respect to minimizing bycatch, NMFS notes that national standard 9 requires minimization of bycatch to the extent practicable. The EA prepared for the emergency interim rule notes that, with the stock biomass increasing, there is an increased likelihood that vessels targeting other species will incidentally harvest monkfish. Therefore, if the emergency interim rule were not extended and Year-4 default management measures became effective, the directed fishery would be completely eliminated and vessels that previously participated in that fishery would be expected to target other species. As such, the default measures would be expected to increase bycatch and bycatch mortality, providing no improved conservation to the stock.

With respect to the commenter's specific concern about bycatch of deep-sea animals, NMFS notes that the 2001 cooperative survey, upon which this comment is based, provided new information that will be fully considered by the Councils as they develop Amendment 2 to the FMP. NMFS also notes that the trip limits established for the SFMA fishery under the emergency interim rule and this emergency rule extension are restrictive and unlikely to support a directed fishery offshore.

*Comment 5:* The environmental analysis accompanying the emergency action is deficient, and the magnitude of the impacts require the preparation of an environmental impact statement (EIS) rather than an EA.

*Response:* Although NMFS agrees with the commenter that this action makes a modification from the measures contemplated for Year-4 in the FMP, NMFS has determined that this action does not have significant impacts that would require the preparation of an EIS, as discussed in the EA and its Finding

of No Significant Impact (FONSI) statement. In support of their comment that an EIS should have been prepared for this action, the commenters mostly rely on comments already addressed herein concerning consistency of the action with FMP overfishing and rebuilding objectives, bycatch methodologies and minimization, and EFH concerns. These concerns are addressed under Responses to Comments 2, 3 and 4. As explained in the responses to these comments, because this action is for 1 year only, because an EIS is being prepared for Amendment 2, and for other reasons stated in the EA and its FONSI, NMFS concludes that an EA is appropriate for this emergency action.

### Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this extension is needed to prevent the restrictive Year-4 default management measures from taking effect on November 19, 2002. Extending the current management measures established by the emergency interim rule (67 FR 35928, May 22, 2002) through implementation of Framework 2 on May 1, 2003, is necessary to prevent substantial, unwarranted and unnecessary economic harm to the industry and a likely increase in monkfish bycatch in other fisheries as a result of terminating the directed monkfish fishery. Accordingly, the AA is extending the expiration date of this emergency interim rule until the effective date of the 2003 management measures, not to exceed 180 days.

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

NMFS prepared a final regulatory flexibility analysis (FRFA) for this action. A summary of the FRFA follows.

A description of the objectives of the emergency interim rule and the need for this extension are explained in the preamble for this action and are not repeated here. This action does not contain any collection-of-information, reporting, record-keeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

One public comment was received on the emergency interim rule. However this comment did not address any of the economic impacts associated with the implementation of this rule.

The measures contained in the emergency interim rule and its proposed extension potentially affect the approximately 704 vessels that currently hold a limited access monkfish permit. According to the analysis presented in

the environmental assessment (EA) prepared for the emergency interim rule, the preferred alternative (implementation of the emergency interim rule) was expected to result in loss of income from fishing year 2000 levels for several vessel types. However, these projected losses in income were lower than the losses that would result from implementation of either the non-preferred or no action alternatives. Therefore, because the analysis showed that the emergency interim rule would have the least effect on small entities compared to the non-preferred and no

action alternatives, this preferred alternative was selected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was

prepared. Copies of the guide will be sent to all holders of permits issued for the monkfish fishery. The guide will be available on the Internet at <http://www.nero.noaa.gov>. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

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

Dated: October 31, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

[FR Doc. 02-28196 Filed 11-1-02; 2:10 pm]

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