

Thus, such a vessel may only have a commercial quantity of reef fish other than deepwater grouper or tilefishes or a recreational bag limit of Gulf reef fish.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary. Prior notice and opportunity for public comment on the reopening is unnecessary because the rule establishing the annual quota has already been subject to notice and comment, and all that remains is the annual administrative act of notifying the public of where harvest stands in relation to the quota, and in this case that additional time is needed to harvest the established quota. The rule contains a routine determination relative to harvest levels for the fishing year that are relatively insignificant in nature and impact to the industry and to the public as a whole.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: September 29, 2008.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

[FR Doc. E8-23582 Filed 10-3-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 622 and 697

[Docket No. 080221249-81231-02]

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:** Final rule.

**SUMMARY:** NMFS issues this final 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 final rule is to enhance the effectiveness and efficiency of managing Atlantic red drum.

**DATES:** This final rule is effective November 5, 2008.

**ADDRESSES:** Copies of the environmental assessment (EA), which describes the impacts of the transfer of management authority, may be obtained from Kate Michie, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308.

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, telephone: 727-824-5305.

**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 by the Atlantic coast states (New Jersey through Florida) and the Commission. This final rule repeals the Council FMP and implementing regulations issued under the Magnuson-Stevens Act and simultaneously replaces them with substantially identical regulations 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.

On April 3, 2008, NMFS published a proposed rule for the transfer of management authority of Atlantic red drum and requested public comment (73 FR 18253). The rationale for this action, including the statute giving authority to the Commission to manage Atlantic red drum in the EEZ, the purpose and need for transfer of management authority, and the benefits of this transfer are included in the preamble to the proposed rule and are not repeated here.

#### Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and NMFS' responses. Three comments were received on this action. One comment was in favor of the transfer of management authority, one comment was opposed to the transfer of authority, and one comment was in favor of the transfer of authority but did not agree that regulations under the Atlantic Coastal Act are comparable to the current Magnuson-Stevens Act regulations.

*Comment 1:* The first commenter stated the transfer of authority will result in more efficient and effective management for Atlantic red drum.

*Response:* The purpose of this action is to manage Atlantic red drum under one FMP rather than two, thus minimizing management costs and eliminating unnecessary duplication of management efforts. This transfer of management authority furthers Magnuson-Stevens Act national standard 7, which states "Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication."

*Comment 2:* The second commenter stated the changes being proposed are anti-environmental in nature, and NMFS in particular is biased toward "fish profiteers."

*Response:* This rule will not change existing restrictions prohibiting the harvest or possession of red drum in the EEZ. 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.

*Comment 3:* One commenter stated the regulations under the Atlantic Coastal Act intended to replace those under the Magnuson-Stevens Act are

not comparable, and the EA does not acknowledge some of the essential fish habitat (EFH) designated for red drum will be eliminated, nor does it mention the loss of habitat areas of particular concern (HAPC).

*Response:* NMFS does not believe that adoption of this rule will result in an appreciable loss of habitat protection for red drum.

As a preliminary matter, red drum EFH, including habitat areas of particular concern, substantially overlaps the EFH of other species. Accordingly, even if red drum EFH designations are necessarily withdrawn in the transfer, NMFS would still likely recommend the same protective measures through its EFH consultations on other species. In other words, although red drum habitat protections would be incidental to EFH consultations on other species, red drum habitat would nevertheless still be protected. For example, the South Atlantic Coastal Migratory Pelagics FMP (CMP FMP) includes EFH areas that overlap areas previously designated as EFH for red drum, namely, barrier island ocean-side waters from the surf to the shelf break zone, all coastal inlets, and all state-designated nursery habitats of particular importance to coastal migratory pelagics. Under the CMP FMP the surf zone is not referred to as a "high-salinity" surf zone as it is in the red drum EFH description; however, the same meaning for each is inferred. Additionally, the South Atlantic Shrimp FMP (Shrimp FMP) does use the term "tidal freshwater" in its designation of EFH for penaeid shrimp. The Shrimp FMP includes inshore nursery areas in its designation of EFH for penaeid shrimp and defines this habitat as tidal freshwater, estuarine, and marine emergent wetlands (e.g., intertidal marshes); tidal palustrine forested areas; mangroves, tidal freshwater, estuarine, and submerged aquatic vegetation (SAV) (e.g., seagrass); and subtidal and intertidal non-vegetated flats. This designation of EFH for penaeid shrimp applies from North Carolina through the Florida Keys.

Further, to the extent that protection is lost under the Magnuson-Stevens Act in the transfer, NMFS believes that such loss is mitigated by comparable protections that would remain under other statutes. Specifically, the Fish and Wildlife Coordination Act, similar to the Magnuson-Stevens Act, requires Federal agencies to first consult with NMFS before taking an action that might impact NMFS trust resources. The Fish and Wildlife Coordination Act requires that the Federal agency "...shall consult with...the head of the agency exercising

administration over the wildlife resources...with a view to the conservation of wildlife resources by preventing loss of and damage to such resources..." Further, the Fish and Wildlife Coordination Act allows the Secretary to make recommendations to the Federal agency on alternative "...means and measures that should be adopted to prevent the loss of or damage to such wildlife resources..." (16 U.S.C. 661-667e). Accordingly, although EFH is a technical term unique to the Magnuson-Stevens Act and EFH consultation is a process reserved to species managed under the Magnuson-Stevens Act, it does not necessarily follow that comparable habitat protection would be altogether lost if red drum were managed under an alternative statute. Federal agencies would still be required to consult with NMFS on the potential impacts of their actions to red drum habitat, but simply under a different statute.

*Comment 4:* One of the above commenters also stated that the EA does not discuss Executive Order (E.O.) 13449, (72 FR 60531, October 24, 2007), regarding the protection of striped bass and red drum, and the rule would not establish consistent EFH consultation requirements between red drum stocks of the Gulf of Mexico and Atlantic.

*Response:* The commenter is concerned this rule will establish inconsistent regulations between the red drum stocks of the Gulf of Mexico and the Atlantic. Gulf of Mexico red drum stocks are already managed independently of the Atlantic red drum stocks. The ability of the NMFS to consult and provide consistent recommendations for the conservation and preservation of habitats utilized by red drum under the Fish and Wildlife Coordination Act will not change. Additionally, because NMFS will continue to consult and provide conservation recommendations for EFH of all other Council-managed species, the ability to consistently protect and conserve fishery habitats, including all habitats utilized by red drum, will not be significantly changed.

NMFS understands this rule to be consistent with the spirit and intent of E.O. 13449, because comparable EFH protections for Atlantic red drum will be maintained under previously noted FMPs for Council-managed species, and comparable fishery management regulations under the Atlantic Coastal Act will take the place of current regulations under the Magnuson-Stevens Act, and because comparable habitat consultation will occur under the Fish and Wildlife Coordination Act. Furthermore, the Atlantic Coastal Act

clearly includes habitat conservation among its intended goals with regards to state-federal cooperation by stating: "The Secretary in cooperation with the Secretary of the Interior shall develop and implement a program to support the interstate fishery management efforts of the Commission. The program shall include activities to support and enhance State cooperation in collection, management, and analysis of fishery data; law enforcement, habitat conservation; fishery research, including biological and socioeconomic research; and fishery management planning" (16 U.S.C. 5103).

#### Classification

The Administrator, Southeast Region, NMFS, determined that the transfer of management authority is necessary for the conservation and management of the Atlantic red drum fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final 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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required, and none was 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: September 30, 2008.

**Samuel D. Rauch III,**

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

■ For the reasons set out in the preamble, 50 CFR parts 622 and 697, are 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, 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.**

\* \* \* \* \*

*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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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 071106671-8010-02]

RIN 0648-XK86

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 total

allowable catch (TAC) of Pacific cod allocated to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 3, 2008, until 2400 hrs, A.l.t., December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 TAC of Pacific cod allocated to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA is 25,583 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 TAC of Pacific cod allocated to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 24,583 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is