REVISED ENVIRONMENTAL ASSESSMENT FOR THE ACTION TO REPEAL THE FEDERAL ATLANTIC COAST RED DRUM FISHERY MANAGEMENT PLAN AND TRANSFER SECRETARIAL AUTHORITY TO REGULATE THE HARVEST AND POSSESSION OF RED DRUM IN AND FROM FEDERAL WATERS OF THE U.S. ATLANTIC FROM THE SOUTH ATLANTIC FISHERY MANAGEMENT COUCNIL UNDER THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT TO THE ATLANTIC STATES MARINE FISHERIES COMMISSION UNDER THE ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT ACT

INCLUDING A FINDING OF NO SIGNIFICANT IMPACT, REGULATORY IMPACT REVIEW, AND REGULATORY FLEXIBILTIY ACT ANALYSIS

May 2008

National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701
727-824-5305
727-824-5308 (fax)
http://sero.NOAA Fisheries Service.noaa.gov

Finding of No Significant Impact (FONSI) for the Proposed Action to Repeal the Federal Atlantic Coast Red Drum Fishery Management Plan and Transfer Secretarial Authority to Regulate the Harvest and Possession of Red Drum in and from the U.S. Atlantic from the Magnuson-Stevens Fishery Conservation and Management Act to the Atlantic Coastal Fisheries Cooperative Management Act

National Marine Fisheries Service

National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 CFR 1508.27 state the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant in making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) **Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?**

Response: No. The proposed action would change the legal authority for managing the Atlantic red drum resource, but would not substantially change management goals or objectives. Additionally, the proposed action would not change current restrictions prohibiting the harvest or possession of red drum in and from federal waters of the U.S. Atlantic. Consequently, the proposed action is not expected to jeopardize the sustainability of the red drum resource.

2) **Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?**

Response: No. The proposed action is largely administrative in nature and would not change current restrictions on fisheries occurring in federal waters of the U.S. Atlantic. Therefore, it is not expected to directly or indirectly affect the sustainability of non-target fish or other species impacted by fishery management actions.

3) **Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act and identified in fishery management plans?**

Response: No. The proposed action would not change current restrictions on fisheries occurring in federal waters of the U.S. Atlantic and, consequently, would not alter the effects of fisheries on ocean and coastal habitats. While the proposed action would eliminate the definition of red drum essential fish habitat defined by the South Atlantic

Fishery Management Council Red Drum FMP, drafted in cooperation with the Mid-Atlantic Fishery Management Council, this same habitat is identified as essential fish habitat for other species managed by the Mid-Atlantic and South Atlantic Fishery Management Councils and, therefore, subject to the same protections currently provided by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

Response: No. The proposed action is largely administrative in nature, and would not alter current fishery operations or their effect on public health and safety.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

Response: No. The proposed action is not expected to alter the effects of current fishing activities on endangered or threatened species, marine mammals, or their critical habitat. The action would not change current restrictions prohibiting the harvest or possession of red drum in federal waters of the U.S. Atlantic. As a result, neither protected species nor their critical habitat would be impacted by red drum fishing in these waters. Any proposal to change current fishing regulations would require the lead agency comply with the protective provisions of the Endangered Species Act and the Marine Mammal Protection Act.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: No. The proposed action is largely administrative in nature, and is not expected to directly or indirectly affect target or non-target species because it would not change current restrictions prohibiting the harvest or possession of red drum in or from federal waters of the U.S. Atlantic. As a result, the proposed action would not alter the availability of predator or prey species or cause other effects that could impact biodiversity, or ecological roles and functions.

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: The proposed action would not impact the social or economic environment because it would not change current restrictions prohibiting the harvest or possession of red drum in federal waters of the U.S. Atlantic. The proposed action would benefit the administrative environment by minimizing the costs and eliminating unnecessary duplication of red drum management, consistent with National Standard 7 of the

Magnuson-Stevens Act. These benefits would be accomplished by eliminating one of the two fishery management plans providing authority for managing the Atlantic red drum resource.

8) Are the effects on the quality of the human environment likely to be highly controversial?

Response: No. The proposed action is being considered at the request of the South Atlantic and Mid-Atlantic Fishery Management Councils, which view the statutory authority provided by the Magnuson-Stevens Act as an unnecessary duplication of authority for red drum management given the statutory authority provided by the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). Because the proposed action would not change current restrictions on red drum harvest, it is not expected to be opposed by Council constituents.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

Response: No. The proposed action is largely administrative in nature and would not impact current management of the red drum resource in federal waters of the U.S. Atlantic. Consequently, it could not be expected to impact any natural resources, regardless of their location or value.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: No. The proposed action would not impact the human environment but would improve the efficiency of the federal fishery management process by eliminating the South Atlantic Fishery Management Council Red Drum FMP, drafted in cooperation with the Mid-Atlantic Fishery Management Council, and allowing the Secretary to use the authority provided by the Atlantic Coastal Act to regulate red drum in federal waters of the U.S. Atlantic in cooperation with the Atlantic States Marine Fisheries Commission.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: No. The proposed action is not dependent on or related to any other foreseeable actions that would impact the same affected environment. The action would repeal the South Atlantic Fishery Management Council Red Drum FMP, drafted in cooperation with the Mid-Atlantic Fishery Management Councils, enabling the Secretary to use the statutory authority provided by the Atlantic Coastal Act to implement and enforce red drum regulations in federal waters. The proposed action would not change current restrictions prohibiting the harvest or possession of red drum in federal waters of

the U.S. Atlantic, or the Secretary's authority to change those regulations at a future date after consulting with the South Atlantic and Mid-Atlantic Fishery Management Councils.

12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: No. The proposed action is largely administrative in nature and would not impact current management of the red drum resource in federal waters of the U.S. Atlantic. Consequently, it could not be expected to affect any of the above-listed structures or objects or to impact any resources.

13) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: No. The proposed action would not directly or indirectly affect target or non-target species because it would not change current restrictions prohibiting the harvest or possession of red drum in or from federal waters of the U.S. Atlantic. As a result, it would not alter the availability of predator or prey species or cause other effects that could indirectly impact the occurrence or status of non-indigenous species within the affected environment.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

Response: No. The Atlantic Coastal Act already provides the Secretary authority to regulate federal fisheries in the U.S. Atlantic when such fisheries are not managed through a federal fishery management plan developed in accordance with the Magnuson-Stevens Act. The proposed action would not establish any new or different authorities for U.S. fishery management, just simply repeal the federal fishery management plan with the intent of transferring Secretarial authority to promulgate and enforce federal regulations governing red drum management from the Magnuson-Stevens Act to the Atlantic Coastal Act.

15) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: No. The proposed action to transfer Secretarial authority to regulate the federal red drum fishery from the Magnuson-Stevens Act to the Atlantic Coastal Act would require the Secretary to support state coastal fisheries programs and collaborate with the appropriate regional fishery management councils and Atlantic States Marine

Fisheries Commission in implementing regulations to govern fishing in federal waters that are compatible with the effective implementation of a coastal fishery management plan and consistent with the national standards set forth in the Magnuson-Stevens Act. Consequently, the proposed action is expected to promote greater consistency and collaboration between state and federal fishery management of the red drum resource.

16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: No. The proposed action is largely administrative in nature, and is not expected to directly or indirectly affect target or non-target species because it would not change current restrictions prohibiting the harvest or possession of red drum in or from federal waters of the U.S. Atlantic. Additionally, the proposed action is not dependent on or related to any other foreseeable actions that would impact the same affected environment. Consequently, the proposed action is not expected to result in any cumulative adverse impacts.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting EA prepared for the transfer of regulatory authority of Atlantic red drum from the Magnuson-Stevens Act, to the Atlantic Coastal act, it is hereby determined that the proposed action to improve the efficiency and coordination of red drum management by providing just one statutory authority for red drum management in both state and federal waters of the U.S. Atlantic, would not significantly affect the quality of the human environment as described above and in the supporting EA. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS is not necessary for this action.

Roy E. Crabtree, Ph.D.
Assistant Administrator for Fisheries

9/12/08
Date

TABLE OF CONTENTS

Finding of No Significant Impact (FONSI) for the Proposed Action to Repeal the Federal Atlantic Coast Red Drum Fishery Management Plan and Transfer Secretarial Authority to Regulate the Harvest and Possession of Red Drum in and from the U.S. Atlantic from the Magnuson-Stevens Fishery Conservation and Management Act to the Atlantic Coastal Fisheries Cooperative Management Act .....**Error! Bookmark not defined.**
1.0 PURPOSE AND NEED FOR ACTION 2
2.0 ALTERNATIVES, INCLUDING THE PROPOSED ACTION 3
2.1 Description of Alternatives 3
2.2 Comparison of Alternatives 4
3.0 AFFECTED ENVIRONMENT 5
3.1 Administrative Environment 6
3.1.1 The fishery management process and applicable laws 6
3.1.1.1 Federal fishery management 6
3.1.1.2 State fishery management 7
3.1.2 History of red drum management 7
3.2 Biological and Physical Environment 10
3.2.1 Red Drum 10
3.2.1.1 Biology 10
3.2.1.2 Status 10
3.2.1.3 Habitat 11
3.2.2 Protected resources 15
3.2.2.1 Marine mammals 15
3.2.2.2 Marine turtles 15
3.2.2.3 Other listed species 16
3.3 Economic and Social Environment 16
4.0 ENVIRONMENTAL CONSEQUENCES 19
4.1 Direct and indirect effects on the administrative environment 19
4.2 Direct and indirect effects on the biological and physical environment 20
4.3 Direct and indirect effects on the economic and social environment 21
4.4 Cumulative impacts 22
4.5 Mitigating measures 23
4.6 Unavoidable adverse impacts 23
4.7 Irreversible and Irretrievable Commitment of Resources 23
5.0 REGULATORY IMPACT REVIEW 23
5.1 Introduction 23
5.2 Problems and Objectives 24
5.3 Methodology and Framework for Analysis 24
5.4 Description of Fisheries 24
5.5 Impacts of Management Measures 24
5.6 Alternative 1: Maintain two FMPs and keep Secretarial authority to promulgate and enforce regulations under the MSA. 25
5.7 Alternative 2: Repeal Council Red Drum FMP and transfer the Secretary's authority to regulate the harvest and possession of the Atlantic red drum resource from

the Council under the Magnuson-Stevens Act to the Atlantic States Commission under the Atlantic Coastal Act (Preferred Alternative). 25
5.8 Alternative 3: Repeal Council Red Drum FMP and transfer authority to regulate fishing for and possession of Atlantic red drum in federal waters to individual states. 26
5.9 Public and Private Cost of Regulations 26
5.10 Determination of Significant Regulatory Action 27
6.0 REGULATORY FLEXIBILITY ACT ANALYSIS 27
6.1 Regulatory Flexibility Act Certification 27
7.0 OTHER APPLICABLE LAW 28
7.1 Administrative Procedure Act 28
7.2 Data Quality Act 28
7.3 Coastal Zone Management Act 29
7.4 Endangered Species Act 29
7.5 Essential Fish Habitat 30
7.6 Marine Mammal Protection Act (MMPA) 30
7.7 Executive Order 12612: Federalism 30
7.8 Executive Order 12866: Regulatory Planning and Review 31
7.9 Executive Order: 12898: Environmental Justice 31
7.10 Executive Order 12962: Recreational Fisheries 31
7.11 Executive Order 13158: Marine Protected Areas 32
8.0 OTHER CONSIDERATIONS 32
8.1 National standards 32
8.2 State jurisdiction pertaining to the Atlantic Coastal Act 32
8.3 Executive Order 13449; Protection of Striped Bass and Red Drum Fish Populations 33
9.0 LIST OF PREPARERS 33
10.0 LIST OF AGENCIES AND ORGANIZATIONS CONSULTED 33
10.1 Coastal Zone Management Programs 33
10.2 Other Agencies, Organizations or Persons 34
11.0 REFERENCES 34

1.0 PURPOSE AND NEED FOR ACTION

The purpose of this action is to repeal the South Atlantic Fishery Management Council's Atlantic Coast Red Drum Fishery Management Plan (Council FMP), drafted in cooperation with the Mid-Atlantic Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 USC 1801) and to transfer management authority to the Atlantic States Marne Fisheries Commission (Atlantic States Commission) under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act; 16 USC 5101). This action was requested by the South Atlantic and Mid-Atlantic Fishery Management Councils, and by the Atlantic States Commission.

Currently, management of Atlantic red drum in federal and state waters is divided between regional fishery management councils and the Atlantic States Commission. The Magnuson-Stevens Act provides the South Atlantic and Mid-Atlantic Fishery Management Councils the authority to propose management measures for red drum in federal waters of the U.S. Atlantic through the Council Red Drum FMP, and the Secretary the authority to promulgate and enforce regulations implementing the Council Red Drum FMP. The South Atlantic Council is the lead Council proposing management measures for the federal red drum fishery. The Mid-Atlantic Council provides input to management decisions by participating on the South Atlantic Council Red Drum Steering Committee. The Atlantic States Commission has the authority to propose management measures for red drum in state waters of the U.S. Atlantic through the FMP for Red Drum (Commission Red Drum FMP). The Atlantic Coastal Act requires Atlantic Coast states to promulgate and enforce regulations implementing the Commission Red Drum FMP in their waters. Additionally, the Atlantic Coastal Act provides the Secretary authority to promulgate and enforce in federal waters red drum regulations that are compatible with the Commission Red Drum FMP and consistent with the national standards of the Magnuson-Stevens Act, if the fishery is not managed under a Council FMP implemented under the Magnuson-Stevens Act.

Repealing the Council FMP would improve the efficiency and coordination of red drum management by providing just one statutory authority for red drum management in both state and federal waters of the U.S. Atlantic. Repealing the Council FMP and transferring management of Atlantic red drum from the South Atlantic Council under the Magnuson-Stevens Act to the Atlantic States Commission under the Atlantic Coastal Act would not substantially change fishery management goals or objectives because any regulations implemented by the Secretary under the Atlantic Coastal Act must be consistent with the national standards that guide fishery management and conservation under the Magnuson-Stevens Act. The proposed action would not change current restrictions established through the Council Red Drum FMP, which prohibit the harvest or possession of red drum in federal waters of the U.S. Atlantic. The Commission Red Drum FMP recommends the Secretary continue the same prohibitions. Additionally, the proposed action would not change management authority for the Gulf of Mexico red drum fishery,

which is managed by the Gulf of Mexico Fishery Management Council in its Gulf of Mexico Red Drum FMP.

2.0 ALTERNATIVES, INCLUDING THE PROPOSED ACTION

2.1 Description of Alternatives

Alternative 1: No Action (Status Quo)

Alternative 1 would continue the status quo management regime, under which the Secretary promulgates and enforces in federal waters of the U.S Atlantic the red drum regulations proposed in the Council Red Drum FMP. This management regime was needed to conserve and manage red drum resources in federal waters prior to the passage of the Atlantic Coastal Act and development of Amendment 2 to the Commission Red Drum FMP. Because the Atlantic Coastal Act now provides the Secretary the authority to promulgate and enforce in federal waters red drum regulations that are compatible with the Atlantic States Commission Red Drum FMP in the absence of an approved federal fishery management plan implemented under the Magnuson-Stevens Act retaining the Council Red Drum FMP now results in an unnecessary duplication of management authorities and associated management costs.

Alternative 2 (Preferred): Repeal the Council Red Drum FMP and transfer Secretarial authority to manage red drum in federal waters of the U.S. Atlantic from the Council under the Magnuson-Stevens Act to the Commission under the Atlantic Coastal Act.

Alternative 2 would repeal the Council Red Drum FMP to provide the Secretary authority to promulgate and enforce federal red drum regulations under the Atlantic Coastal Act. This alternative would not change current restrictions prohibiting the harvest or possession of red drum in federal waters of the U.S. Atlantic. Rather, it would eliminate one of two statutory authorities for managing the red drum resource in federal waters of the U.S. Atlantic. The South Atlantic Council, Mid-Atlantic Council, and Atlantic States Commission have determined the Commission Red Drum FMP is a better mechanism for managing the red drum resource in federal waters of the U.S. Atlantic because, absent the presence of the Council FMP the Commission FMP could manage the resource throughout its range and in conjunction with the Atlantic Coast states.

Alternative 3: Repeal the Council Red Drum FMP and transfer authority to manage red drum in federal waters of the U.S. Atlantic to the Atlantic Coast states

Alternative 3 would repeal the Council Red Drum FMP and provide the Atlantic Coast states the ability to manage red drum in federal waters of the U.S. Atlantic. The Atlantic Coast states bordering the red drum management unit defined in the Council FMP include Delaware, District of Columbia, Florida, Georgia, Maryland, New Jersey, North

Carolina, Pennsylvania, South Carolina, and Virginia. Section 306(a)(3) of the Magnuson-Stevens Act provides states authority to regulate fishing vessels outside their boundaries in certain circumstances, including but not limited to when "the fishing vessel is registered under the law of that state" and "there is no fishery management plan or other applicable federal fishing regulations for the fishery in which the vessel is operating."

Currently, the Atlantic Coastal Act requires Atlantic Coast states to implement and enforce in state waters, regulations established through the Commission Red Drum FMP. However, the Act does not require states to implement and enforce those regulations in federal waters off their states in the absence of a Red Drum FMP established under the authority of the Magnuson-Stevens Act. Consequently, this alternative would not guarantee the red drum resource would be protected in federal waters because state action to modify existing regulations or create new regulations would be voluntary. Additionally, the alternative would require regulatory action be coordinated among the states because an individual state is not authorized to regulate the activities of fishing vessels in federal waters unless those vessels are registered in that particular state. For instance, Georgia could prohibit Georgia fishing vessels from harvesting or possessing red drum in federal waters off Georgia, but could not prohibit vessels from other states from harvesting or possessing red drum in those waters. Consequently, all the states would have to prohibit the harvest or possession of red drum in federal waters to make such an alternative effective, and such a coordinated effort would be both difficult and costly to implement and enforce. If one or more of the Atlantic Coast states did not continue the moratorium on the harvest and possession of the red drum resource in federal waters, then the residents of the Atlantic Coast states subject to the moratorium would be unfairly burdened.

2.2 Comparison of Alternatives

Table 1 provides a summary comparison of the environmental impacts of the alternatives. These impacts are described in more detail in Section 4.0.

Table 1. Comparison of Impacts of Alternatives.

Alternatives	Administrative			Biological/Physical			Social/Economic		
	Effect	+/-	Rank	Effect	+/-	Rank	Effect	+/-	Rank
Alt 1: Secretary uses Magnuson-Stevens Act authority to implement and enforce in federal waters	Unnecessary duplication of management efforts	-	2	Continued protection of red drum in federal waters through harvest prohibition Continued protection of red	+ +	1	Continued effects associated with harvest prohibition in federal waters	- ST + LT	2

red drum regulations proposed in Council FMP.				drum habitat under Council Red Drum FMP					
Preferred Alt 2: Secretary uses Atlantic Coastal Act authority to implement and enforce in federal waters regulations that are compatible with the Commission FMP and consistent with the national standards set forth in the Magnuson-Stevens Act.	Streamlined management process More effective coordination among state and federal management	+ +	1	Continued protection of red drum in federal waters through harvest prohibition Continued protection of red drum habitat under other Council FMPs	+ +	1	Continued effects associated with harvest prohibition in federal waters Decreased management costs	- ST + LT +	1
Alt 3: Atlantic Coast states manage red drum in federal waters.	Increased management costs Decreased management efficiency	- -	3	Possible termination of current harvest prohibition protecting red drum in federal waters Continued protection of red drum habitat under other Council FMPs	- +	2	Unknown (dependent upon if/how federal regulations would be changed) Increased management costs	+/- -	3

ST = Short term
LT = Long term

3.0 AFFECTED ENVIRONMENT

The following summarizes and incorporates by reference relevant information on the affected environment described in the Council Red Drum FMP and Amendment 2 to the Commission Red Drum FMP. These documents can be obtained from the South Atlantic Council (www.safmc.net) and Atlantic States Commission (www.asfmc.org), respectively.

3.1 Administrative Environment

3.1.1 The fishery management process and applicable laws

3.1.1.1 Federal fishery management

Current regulations governing the harvest of red drum in federal waters of the U.S. Atlantic are implemented under the authority of the Magnuson-Stevens Act. The Magnuson-Stevens Act claims sovereign rights and exclusive fishery management authority over most fishery resources within the U.S. exclusive economic zone (EEZ), an area extending 200 nautical miles from the seaward boundary of each of the coastal states, and authority over U.S. anadromous species and continental shelf resources that occur beyond the U.S. EEZ.

The Magnuson-Stevens Act divides responsibility for federal fishery management between the Secretary and eight regional fishery management councils. The South Atlantic and Mid-Atlantic Councils manage the red drum resource in federal waters of the U.S. Atlantic, in cooperation with the Secretary. The South Atlantic Council is responsible for preparing, monitoring, and revising the Council Red Drum FMP, and has thirteen voting members: one from NOAA FISHERIES SERVICE, four from the state fishery agencies of North Carolina, South Carolina, Georgia, and Florida, and eight public members appointed by the Secretary. Non-voting Council members include representatives of the U.S. Fish and Wildlife Service, U.S. Coast Guard, Department of State, and Atlantic States Commission. The eight public Council members serve three-year terms and are appointed by the Secretary from lists of nominees submitted by state governors. Public interests also are involved in the fishery management process through participation on South Atlantic Council advisory panels and through Council meetings, which, with very few exceptions, are open to the public. The Mid-Atlantic Council provides input to management decisions by participating on the South Atlantic Council Red Drum Steering Committee.

The Secretary is responsible for implementing regulations proposed in the Council Red Drum FMP and FMP amendments after ensuring they are consistent with the Magnuson-Stevens Act, and with other applicable laws, including but not limited to the National Environmental Policy Act, Endangered Species Act, Marine Mammal Protection Act, Regulatory Flexibility Act, Executive Order 12866, and the Administrative Procedure Act, which sets forth a “notice and comment” rulemaking process. In most cases, the Secretary has delegated this management authority to NOAA Fisheries Service.

The Atlantic Coastal Act also provides the Secretary authority to implement regulations governing fishing in federal waters in situations when there is no approved federal fishery management plan in place under the Magnuson-Stevens Act, and after the Secretary has consulted with the appropriate regional fishery management councils. The Magnuson-Stevens Act requires such regulations be compatible with the effective implementation of

an interstate fishery management plan developed by the Atlantic States Commission, and consistent with the national standards set forth in Section 301 of the Magnuson-Stevens Act. The Commission can request the Secretary to implement regulations necessary to implement its FMPs. The proposed action would not change management authority for the Gulf of Mexico red drum fishery, which is managed by the Gulf of Mexico Fishery Management Council in its FMP for the Red Drum fishery of the Gulf of Mexico.

3.1.1.2 State fishery management

The Atlantic States Commission manages red drum in state waters, which extend three nautical miles from the shorelines of Atlantic Coast states. The Atlantic Coastal Act acknowledges the Commission's management authority, and requires Atlantic Coast states implement and enforce in state waters regulations proposed in the Commission Red Drum FMP.

3.1.2 History of red drum management

The Atlantic States Commission established the first Commission Red Drum FMP in 1984. The FMP defined the red drum management unit as state waters extending from Florida to Maryland, and recognized juvenile red drum had been subject to significant overfishing in state waters for some time. Four years later, the Commission's Interstate Fisheries Management Program Policy Board requested all Atlantic Coast states from Florida to Maine to implement FMP requirements to prevent northern markets from developing for southern fish species, including red drum. However, compliance with FMP requirements was voluntary at this time because the Atlantic Coastal Act had not yet been passed and the FMP's management unit did not include waters off states north of Maryland.

The South Atlantic Council, in cooperation with the Mid-Atlantic Council, prepared a Council Red Drum FMP in 1990 to manage the red drum resource in federal waters of the U.S. Atlantic. The Council FMP defined the red drum management unit as the population of red drum occurring in the U.S. EEZ along the Atlantic Coast from the boundary separating federal waters of the Gulf of Mexico and South Atlantic to the New Jersey/New York border. The FMP described the following major problems in the fishery:

1) Excessive fishing mortality on juvenile red drum, predominantly in state waters, resulting in decreased recruitment to the spawning stock;
2) Split jurisdictions, which resulted in a federal FMP implemented by the Secretary under the Magnuson-Stevens Act, and a state management regime, which lacked authority to ensure Atlantic Coast states implemented conservation measures developed by the Commission; and

3) A critical need for additional biological, economic, and sociological data to monitor the status of the red drum resource and the effectiveness of proposed management measures.

Additionally, the FMP described the following objectives:

1) Maintain a spawning stock biomass sufficient to prevent recruitment failure by working cooperatively with the states to provide 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) Provide 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 in 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) Promote 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.

The Councils' FMP recommended, and the Secretary implemented, regulations prohibiting the harvest or possession of red drum in or from federal waters of the U.S. Atlantic. Additionally, the FMP recommended Atlantic Coast states implement regulatory measures needed to achieve the target level of escapement.

In 1991, the Atlantic States Commission adopted Amendment 1 to the Commission Red Drum FMP, which was developed with the assistance of the South Atlantic Council and intended to make the Commission's FMP compatible with that of the Council. Amendment 1 expanded the management unit to include state waters from Florida to the New York-New Jersey boarder, and defined an escapement goal of 10 percent. The Commission's definition of the red drum management unit was later extended eastward to include the EEZ through Amendment 2 to the Commission FMP.

In 1993, the Atlantic Coastal Act was enacted, and the Commission was charged with preparing and adopting FMPs to provide for the conservation of coastal fishery resources, including those distributed across waters under the jurisdiction of one or more states and the federal government. Additionally, the Act required states to implement and enforce Commission FMPs in their waters.

In 1998, the Secretary approved Amendment 1 to the Council Red Drum FMP, which identified and described essential fish habitat and habitat areas of particular concern, in accordance with the 1996 amendments to the Magnuson-Stevens Act. In June 2002, Amendment 2 to the Council Red Drum FMP established new proxy reference points for red drum, which were based on the spawning potential ratio (SPR) of the stock. NOAA

FISHERIES SERVICE partially approved these reference points because available data and information were not sufficient to estimate their associated numerical values.

In 2000, the South Atlantic Council Red Drum Assessment Group concluded that, although most states had implemented regulations consistent with the requirements of Amendment 1 to the Commission's FMP, red drum continued to be overfished. The Assessment Group noted the escapement rate was well below the optimum yield of 40 percent SPR defined by the Council in Amendment 2 to the Red Drum FMP. Later that year, the Council Red Drum Management Committee and the Commission's South Atlantic State-Federal Management Board indicated the Commission needed to implement additional management measures to reduce mortality on juvenile red drum in state waters.

In 2002, the Atlantic States Commission adopted Amendment 2 to the Commission Red Drum FMP, which expanded the management unit to encompass the red drum resource in state and federal waters throughout its Atlantic coast range in accordance with the Atlantic Coastal Act and the recommendations of the South Atlantic Council. Amendment 2 established a goal of achieving and maintaining the optimum yield of the Atlantic red drum fishery, defined as the amount of harvest that can be taken by U.S. fishermen while maintaining the static SPR at or above 40 percent. The amendment provided the states with the flexibility to develop and implement bag and size limits for red drum in order to meet this management goal. Other management measures in Amendment 2 included a coast-wide 27-inch total length (TL) or less maximum size limit and a payback provision for any commercial fisheries that exceed their current landings cap. The amendment also required states to maintain current or more restrictive commercial fishery regulations. In addition to these measures within the management unit, Amendment 2 proposed that states outside the management unit (New York through Maine) implement supportive measures to protect the red drum resource. Specifically, those states were asked to implement a provision to prohibit the harvest, possession and sale of red drum greater than 27 inches TL. Atlantic Coast states from Florida through New Jersey implemented recreational bag and size limit regulations aimed at achieving the 40 percent SPR goal, and agreed to maintain status quo or more restrictive commercial fishery regulations.

Following the implementation of Amendment 2 to the Commission Red Drum FMP, the South Atlantic and Mid-Atlantic Councils determined they had done all they could to protect the red drum spawning stock, but lacked the jurisdiction to prevent overfishing of juveniles in state waters. The Councils recognized that, because the Atlantic Coastal Act provides the Secretary the authority to implement and enforce in federal waters red drum regulations that are compatible with the Atlantic States Commission Red Drum FMP and consistent with the national standards of the Magnuson-Stevens Act, the Council FMP prepared under the authority of the Magnuson-Stevens Act presented an unnecessary duplication of management efforts and costs. 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 Red Drum FMP, and use the authority provided by the Atlantic Coastal Act to manage red drum in federal waters of the U.S. Atlantic. The Atlantic States Commission supported this request in a letter dated December 17, 2004, and recommended the Secretary continue regulations established through the Council FMP. Specifically, the requested action would require the Secretary withdraw existing management measures for red drum in federal waters of the U.S. Atlantic established under the authority of the Magnuson-Stevens Act and re-issue the same management measures under the authority of the Atlantic Coastal Act.

3.2 Biological and Physical Environment

3.2.1 Red Drum

3.2.1.1 Biology

There is a separate and distinct red drum (*Sciaenops ocellatus)* population in the Gulf of Mexico and in the Atlantic Ocean. The Gulf red drum population ranges along the Gulf Coast into northern Mexico. The Atlantic red drum population ranges from the Gulf of Maine to Key West, Florida. Management is greatly influenced by the biology of the fish. The younger fish are found in state waters while the larger fish and the schools may be found in either the offshore state waters (shore to three miles) or federal waters (three to 200 miles). Because of this distribution, juveniles tend to experience higher rates of exploitation than the offshore adult population. The specific habitat requirements of the species at different life history stages are described in Section 3.2.1.3.

The red drum exhibits life history characteristics similar to those of other members of the Sciaenidae family, including croaker, black drum, and spotted seatrout. The spawning season of western Atlantic sciaenids is protracted over the spring and summer or fall and winter. The actual time when spawning begins varies, depending on water temperatures. However, large schools of spawning red drum tend to congregate around major passes in relatively shallow water during late summer and fall. Sciaenids are opportunistic carnivores, which alter their diets as they grow. Larval sciaenids feed selectively on pelagic zooplankton. Juveniles feed on invertebrates, and then change to a finfish diet as they mature. While the numbers of larger and older fish have declined, some fish are still taken that are as much as 60 years old.

3.2.1.2 Status

The red drum fishery is difficult to manage because there are limited data on the adult population with which to assess stock status. Landings of red drum are principally sub-adults (ages one to four), and while there are some catches of older fish, they must be released alive due to maximum size restrictions. Consequently, fishery regulations are generally designed to ensure a certain percentage of immature females survive to become reproductive adults. This concept is referred to as SPR and forms the basis for

management. SPR is defined as the ratio of estimated female spawning stock biomass or egg production in a fished versus unfished stock. The last stock assessment for this population was conducted in 2000 and included data through 1998. The following discussion of population status summarizes information from the 2005 Review of the Commission Red Drum FMP prepared by the Commission's Red Drum Plan Review Team.

The population models used in the coast-wide assessments (specifically yield-per-recruit and static SPR) are based on equilibrium assumptions. Previous estimates of escapement rates (relative survival of red drum from age at entry to fishery to age four) for 1992 to 1994 ranged from 10.4 percent for the northern region (North Carolina to New Jersey) to 17.2 percent for the southern region (Florida to South Carolina) (Vaughan 1996). Escapement rate estimates for Florida Atlantic red drum (to age four) during the period 1992 to 1994 ranged from 30 to 64 percent depending on the assumed size structure of released fish (Murphy 2002). This may mean escapement rates in Georgia and South Carolina are lower than the regional estimate. Estimates of the static SPR ranged from 9-14 percent for the northern and southern regions, respectively. These may be overestimates because most states north of North Carolina allow adult fish to be taken in the fishery and the analysis assumes no adult fishing mortality or any discard mortality from commercial fishing operations and recreational use of commercial (gillnet) gear.

Results of the most recent full assessment (Vaughan and Carmichael 2000) describe escapement rates for the northern region on the order of 18 percent, but those rates may be overestimated due to a lack of discard data for both commercial and recreational netting practices. The 15 percent escapement rate estimate provided for the southern region may not reflect escapement rates throughout the region, because there appears to be significant differences between Florida and Georgia/South Carolina. The red drum population off the east coast of Florida appears to be recovering faster than that in neighboring state waters, which could be attributed to very strict harvest controls in Florida. The 1999-2000 estimates of annual escapement rates on Florida's Atlantic coast ranged from 16 to 54 percent and were highly dependent on the assumed size structure of the released catch (Murphy 2002). The assessment also indicated recruitment has seriously declined in the southern region from a high of 1.2 million recruits to age-1 in 1987 to 200,000 in 1998. Recruitment in the northern region has fluctuated without trend ranging from 550,000 recruits in 1991 to 75,000 in 1998. The population will be reassessed in 2008/2009, to determine its status relative to the 40 percent SPR goal. Currently, information suggests that overfishing is occurring, although it is not clear if the stock is overfished.

3.2.1.3 Habitat

Amendment 1 to the Council Red Drum FMP defined red drum essential fish habitat to include the following habitats to a depth of 50 meters offshore from Virginia through the Florida Keys: tidal freshwater; estuarine emergent vegetated wetlands (flooded

saltmarshes, brackish marsh, and tidal creeks); estuarine scrub/shrub (mangrove fringe); submerged rooted vascular plants (sea grasses); oyster reefs and shell banks; unconsolidated bottom (soft sediments); ocean high salinity surf zones; and artificial reefs.

Spawning Habitat: Early studies led investigators to conclude that red drum spawn in nearshore areas in the vicinity of inlets and passes throughout their range (Pearson 1929; Miles 1950; Simmons and Breuer 1962; Yokel 1966; Jannke 1971; Setzler 1977; Music and Pafford 1984; Holt et al. 1985). However, evidence now suggests red drum also utilize high-salinity estuarine areas along the coast (Murphy and Taylor 1990; Johnson and Funicelli 1991; Nicholson and Jordan 1994; Woodward 1994). These expansive areas offer adequate conditions for survival of eggs and larvae and favorable circulation patterns that help transport larvae to suitable nursery areas (Ross and Stevens 1992). Red drum spawning has been documented from nearshore waters, in the vicinity of passes and inlets and inside estuaries such as Pamlico Sound, North Carolina, and Mosquito Lagoon, Florida (Murphy and Taylor 1990; Wenner et al. 1990; Johnson and Funicelli 1991; Ross and Stevens 1992; Ross et al. 1995).

Egg and Larval Habitat: Nelson et al. (1991) reported red drum eggs to be commonly encountered in several southeastern estuaries, in salinities above 25 parts per thousand (ppt). Indeed, laboratory experiments in Texas (Neill 1987; Holt et al. 1981) established that optimum temperature and salinity for hatching and survival of red drum larvae are 25° C and 30 ppt, respectively. The spatial distribution and relative abundance of eggs in estuaries, as expected, mirrors that of spawning adults (Nelson et al. 1991) and eggs and early larvae utilize high salinity waters inside inlets and passes and in the estuary proper. Johnson and Funicelli (1991) collected viable red drum eggs in Mosquito Lagoon, Florida, in average daily water temperatures from 20-25° C and average salinities from 30 to 32 ppt. The largest number of eggs collected during the study was in depths ranging from 1.5-2.1 meters (m) and highest concentrations of eggs were found at the edge of the channel.

Upon hatching, red drum larvae are pelagic (Johnson 1978) and evidence from laboratory studies indicates that development is temperature dependent (Holt et al. 1981). They make the transition between pelagic and demersal habitats upon reaching the nursery grounds (Pearson 1929; Peters and McMichael 1987; Comyns et al. 1991; Rooker and Holt 1997). Then they may utilize tidal currents (Setzler 1977); Holt et al. 1989) or density-driven currents (Mansueti 1960) to attain low-salinity nurseries in the upper reaches of estuaries (Mansueti 1960; Bass and Avault 1975; Setzler 1977; Weinstein 1979; Holt et al. 1983b; Holt et al. 1989; Peters and McMichael 1987; McGovern 1986). Once in the nurseries, red drum larvae grow rapidly and evidence suggests that red drum may select nursery areas based on the presence of environmental conditions that contribute to rapid growth (Baltz et al. 1998).

Red drum larvae along the Atlantic coast are reportedly common in most major southeastern estuaries, with the exception of Albemarle Sound, North Carolina, and they are abundant in the St. Johns and Indian River estuaries, Florida (Nelson et al. 1991). Lyczkowski-Shultz and Steen (1991) reported evidence of diel vertical stratification among red drum larvae found in depths less than 25 m at both offshore and nearshore locations. Larvae (1.7 to 5.0 mm mean length) were found at depth during the night and higher in the water column during the day. At the time of this study, water was well mixed and temperature ranged between approximately 26° and 28° C. No consistent relationship between the distribution of larvae and tidal stage was detected.

Juvenile Habitat: Juvenile red drum utilize a variety of inshore habitats throughout their range, including tidal freshwater habitats, low-salinity reaches of estuaries, estuarine emergent vegetated wetlands, estuarine scrub/shrub, submerged aquatic vegetation, oyster reefs, shell banks, and unconsolidated bottom (Council 1998). In general, juvenile red drum are found throughout southeastern estuaries in all the habitat types described above. In the Chesapeake Bay, juveniles (20-90 mmtotal length (mm TL)) were collected in shallow waters from September to November, but no indication as to the characteristics of the habitat was given (Mansueti 1960). According to Nelson et al, (1991), southeastern estuaries where juveniles (including subadults) are abundant are Bogue Sound, North Carolina: Winyah Bay, South Carolina; Ossabaw Sound, and St. Catherine/Sapelo Sound, Georgia; and the St. Johns River, Florida. They are highly abundant in the Altamaha River and St. Andrews/St. Simon Sound, Georgia, and the Indian River, Florida.

North Carolina Division of Marine Fisheries surveys of juvenile red drum indicate juvenile red drum were consistently abundant in shallow waters (less than 5 feet) near the mouths of the Pamlico and Neuse Rivers and in smaller bays and rivers between them. In general, habitats supporting juvenile red drum in North Carolina can be characterized as detritus or mud-bottom tidal creeks in western Pamlico Sound and mud or sand bottom habitat in other areas (Ross and Stevens 1992). Within submerged aquatic vegetation beds, investigations have shown juveniles to prefer areas with patchy grass coverage to areas with homogeneous vegetation (Mercer, 1984, Ross and Stevens 1992, Rooker and Holt 1997). Also in a Texas estuary, young red drum (6 to 27 mm standard length (SL)) were never present over non-vegetated muddy-sand bottom; highest densities occurred in the ecotone between seagrass and non-vegetated sand bottom (Rooker and Holt 1997).

Subadult Habitat: Red drum begin the subadult phase of their life cycle upon leaving the shallow nursery habitat at approximately 200 mm TL (10 months of age). It is at this stage in their life cycle that red drum utilize a variety of habitats within the estuary and become most vulnerable to exploitation (Pafford et al.1990; Wenner 1992). Tagging studies conducted throughout the species range indicate that most sub-adult red drum tend to remain in the vicinity of a given area (Beaumarriage 1969; Osburn et al. 1982; Music and Pafford 1984; Wenner at al. 1990; Ross and Stevens 1992; Woodward 1994;

Marks and DiDomenico 1996). Movement within the estuary is most likely related to changes in temperature and food availability (Pafford et al. 1990; Woodward 1994).

During 1994 and 1995, the Inshore Fisheries Section of the South Carolina Department of Natural Resources conducted several aerial surveys to attempt to evaluate abundance and habitat utilization of subadult red drum along the South Carolina coast. Aerial surveys were generally deemed inefficient at estimating the number of fish inhabiting particular areas, especially inlets and beachfront areas because the visibility of schools from the air depends on the interplay of temporal, climactic, topographic and behavioral factors. On the occasions when red drum schools were reliably located, they were found in flats at the confluence of rivers, inside inlets, creeks, sounds and bays. Aerial surveys proved useful to characterize the general topography of sub-adult red drum habitat in the intertidal and shallow-subtidal portions of the coast. It appears that typical habitats where sub-adult red drum are found in South Carolina are of two general types. In the northern portions of the coast, typical subadult habitat consists of broad (up to 200 m or more in width), gently sloping flats often leading to the main channel of a river or a sound. Along the southern portion of the coast, subadult red drum habitat consists of more narrow (50 m or less), fairly level flats traversed by numerous small channels, typically 5- to 10-m wide by less than 2-m deep at low tide.

Adult Habitat: Along the Atlantic coast, red drum migrate north and inshore in the spring. In the fall, they migrate offshore and south. Overall, adults tend to spend more time in coastal waters after reaching sexual maturity. However, they do continue to frequent inshore waters on a seasonal basis. Less is known about the biology of red drum once they reach the adult stage and accordingly, there is a lack of information on habitat utilization by adult fish. The South Atlantic Council Habitat Plan (Council 1998) cited high salinity surf zones and artificial reefs as essential fish habitat (EFH) for red drum in oceanic waters, which comprise the area from the beachfront seaward. In addition, nearshore and offshore hard/live bottom areas have been known to attract concentrations of red drum.

In addition to natural hard/live bottom habitats, red drum also occupy artificial reefs and other man-made structures. Currently, approximately 120,000 acres or 155 squared nautical miles (nm^2) of ocean and estuarine bottom along the South Atlantic have been permitted for the development of artificial reefs. Artificial reefs are considered hard/live bottom and were included in the Southeast Area Monitoring and Assessment Program's (SEAMAP) bottom mapping project. Most Atlantic states have established, or are in the process of developing, artificial reef management programs
.
Nicholson and Jordan (1994) found adult red drum from late November until the following May at natural and artificial reefs along tide rips or associated with the plume of major rivers in Georgia. Data from this study suggested high seasonal fidelity to a specific area. Fish that were tagged in the fall along shoals and beaches were relocated to waters from 9 to 22 kilometers (km) offshore during winter months and back at the

original capture site in the spring. In the summer, fish moved up the Altamaha River as far as 20 km to what the authors refer as pre-spawn staging areas and returned to the same shoal or beach again in the fall.

3.2.2 Protected resources

A variety of species inhabiting the management area of the Council Red Drum FMP are afforded protection under the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), and/or the Migratory Bird Treaty Act (MBTA) of 1918. A brief discussion of these species is provided below. Additional information on protected species in federal waters of the U.S. Atlantic, their habitats, and the laws that protect them, can be found at http://www.NOAA Fisheries Service.noaa.gov/pr/species/.

The proposed action is largely administrative in nature, and is not expected to alter the effects of current fishing activities on endangered or threatened species, marine mammals, or their critical habitat. Because the action would not change current restrictions prohibiting the harvest or possession of red drum in federal waters of the U.S. Atlantic, neither protected species nor their critical habitat would be impacted by red drum fishing in these waters. Any future proposal to change current fishing regulations would require the lead agency comply with the protective provisions of the ESA, MMPA, and other laws.

3.2.2.1 Marine mammals

ESA-listed species of whales known to occur in the affected area include the sperm whale (*Physeter macrocephalus*), blue whale (*Balaenoptera musculus*), fin whale (*Balaenoptera physalus*), sei whale (*Balaenoptera borealis*), humpback whale (*Megaptera noveangliae*), and northern right whale (*Eubaleana glacialis*). Each of these species is classified as endangered, which is defined as being in imminent danger of extinction throughout all or a significant portion of their range. These species, as well as other marine mammal species in the affected area are also protected under the MMPA.

3.2.2.2 Marine turtles

Sea turtles known to occur in the affected area include the Kemp's ridley turtle (*Lepidochelys kempii*), hawksbill turtle (*Eretmochelys imbricate*), green turtle (*Chelonia mydas*), leatherback turtle (*Dermochelys coriacea*), and loggerhead turtle (*Caretta caretta*). The Kemp's ridley, hawksbill, and leatherback turtles are classified as endangered under the ESA. The loggerhead turtle is listed as threatened, which signifies it is likely to become endangered in the foreseeable future. The green turtle is also classified as threatened, with the exception of the breeding population off Florida, which is listed as endangered. Because scientists are unable to distinguish which population a green turtle is from away from the nesting beach, all green turtles are classified as endangered wherever they occur in U.S. Atlantic waters.

3.2.2.3 Other listed species

Two threatened coral species known to occur in the affected area include the elkhorn (Acropora palmata) and staghorn (A. cervicornis) coral. The U.S. distinct population segment of smalltooth sawfish (Pristis pectinata), which occurs in shallow coastal waters of the U.S. Atlantic, was listed as endangered on April 1, 2003. Two seabird species under the jurisdiction of the U.S. Fish and Wildlife Service, Bermuda, also are believed to occur in the affected area: the Bermuda petrel (Pterodrama cahow) and the roseate tern (Sterna dougallii). The Bermuda petrel is endangered throughout its range. The roseate tern is endangered on the Atlantic coast, south to North Carolina, and threatened elsewhere.

3.3 Economic and Social Environment

The Council Red Drum FMP defines the management unit as the population of red drum occurring in federal waters of the U.S. Atlantic from the New York/New Jersey line to the federal boundary between the South Atlantic and Gulf of Mexico. The Commission Red Drum FMP as amended defines the management unit as the population of red drum occurring in both state and federal waters from the New York/New Jersey line to the federal boundary between the South Atlantic and Gulf of Mexico.

The red drum is a very popular recreational species throughout the region because of its intense fight and popularity as a food fish. Several Atlantic Coast states have declared red drum "game fish," and have prohibited the commercial harvest and sale of this species. The recreational fisheries target small "puppy drum" in shallow estuarine waters and large trophy fish along the Mid- and South Atlantic barrier islands. They primarily use hook-and-line gear, although some North Carolina fishermen take red drum recreationally with gill nets. Since the 1980s, recreational fishing has accounted for about 90 percent of all red drum landings on the Atlantic coast. The number of red drum harvested by recreational fishermen has generally ranged from 300,000 to 500,000 since 1981. Over a million fish were taken in both 1984 and 1985, but this was exceptional. Recreational harvest in 2004 was about 465,600 fish (1.5 mp), the majority taken by Florida, Georgia, and South Carolina anglers. The number of red drum released by recreational fishermen in 2004 was approximately 1.9 million fish, an increase from the estimated 1.5 million red drum released in 2003.

Commercial red drum fisheries landed 58,000 to 422,000 pounds annually from 1960 to 2003, with no apparent trends. Historically, the majority of the commercial red drum harvest was landed in North Carolina and Florida. However, Florida prohibited the commercial harvest of red drum in January 1989. North Carolina, Virginia, and Maryland are currently the only Atlantic Coast states with commercial red drum fisheries. These are generally non-directed fisheries, using pound nets, shrimp trawls, hand lines, haul seines, and gill nets. Coast-wide commercial landings for 2004 were approximately 54,736 pounds, the majority (98.8 percent) of which was landed in North Carolina. This

is the lowest number of commercial landings recorded for red drum. Commercial harvest in North Carolina fisheries is controlled by a 250,000 pound annual catch quota.

Year	RI	NY	NJ	DE	MD	VA	NC	SC	GA	FL EC	Total
1960					200	29,400	79,300	4,200	400	129,000	242,500
1961						12,000	89,700	900	1,000	114,500	218,100
1962						12,900	60,900			149,300	223,100
1963						2,700	71,200			134,200	208,100
1964						4,600	101,500	11,500		119,000	236,600
1965					1,200	94,900	71,400			146,300	313,800
1966					200	3,100	35,200	200	2,700	153,000	194,400
1967						1,100	12,800	900	5,800	147,100	167,700
1968						100	12,500		5,500	167,000	185,100
1969					400	700	3,900	700	2,700	119,000	127,400
1970						100	7,500	400	2,200	146,800	157,000
1971						700	17,200	1,300	1,200	85,200	105,600
1972						5,900	42,900	1,200	3,400	128,400	181,800
1973				900		6,200	70,300	600	3,700	166,500	248,200
1974						15,700	142,000	2,300	3,100	137,300	300,400
1975				200		19,600	214,000	12,400	10,000	83,300	339,500
1976						18,600	168,200	2,600	7,300	106,000	302,700
1977				200		300	19,700	800	5,000	103,500	129,500
1978				300		2,100	21,774	4,325	328	104,696	133,523
1979					100	1,900	126,517	1,767	935	92,684	223,903
1980						400	243,223	4,107	1,493	191,222	440,445
1981						200	93,420		261	258,374	352,255
1982						1,700	52,561	2,228	251	139,170	195,910
1983					100	41,700	219,871	2,274	1,126	105,164	370,235
1984						2,600	283,020	3,950	1,961	130,885	422,416
1985						1,100	152,676	3,512	3,541	88,929	249,758
1986					1,000	5,400	249,076	12,429	2,939	77,070	347,914
1987						2,600	249,657	14,689	4,565	42,993	314,504
1988					8,100	4,000	220,271		3,281	284	235,936
1989					1,000	8,200	274,356	165	3,963		287,684
1990					29	1,481	183,216		2,763		187,489
1991					7,533	24,771	96,045		1,637		129,986
1992					742	2,352	128,497		1,759		133,350
1993					121	8,637	238,099		2,533		249,390
1994	5,094				1,152	4,080	142,160		2,141		154,627
1995		668			6	2,992	248,200		2,578		254,444
1996		8				2,073	113,401		2,271		117,753
1997	43				24	4,049	52,548		1,395		58,059
1998	165	57	311		419	6,436	294,415		672		302,475
1999		47	241		707	12,368	372,996		1,115		387,474
2000		1,215			877	11,457	271,013		707		285,269
2001		58	14		727	5,318	149,674				155,791
2002		116				7,752	79,767				87,635
2003		43			819	2,839	105,759				109,460
2004		25	12			788	54,117				54,942
2005						665	128,821				129,486
2006						2,085	168,548				170,633
Total	5,302	2,237	578	1,600	25,456	400,643	6,233,898	89,446	98,215	3,566,871	10,424,246

Table 2. Commercial landings in pounds of red drum along Atlantic coast 1960-2006.

4.0 ENVIRONMENTAL CONSEQUENCES

Alternative 1: No Action (Status Quo)

Alternative 2 (Preferred): Repeal the Council Red Drum FMP and transfer Secretarial authority to manage red drum in federal waters of the U.S. Atlantic from the South Atlantic Council under the Magnuson-Stevens Act to the Commission under the Atlantic Coastal Act.

Alternative 3: Repeal the Council Red Drum FMP and transfer authority to manage red drum in federal waters of the U.S. Atlantic to the Atlantic Coast states

4.1 Direct and indirect effects on the administrative environment

Alternative 1 (no action) would maintain the status quo management regime, under which the Secretary promulgates and enforces in federal waters of the U.S Atlantic the red drum regulations proposed in the Council Red Drum FMP under the authority of the Magnuson-Stevens Act. This management regime was needed to conserve and manage red drum resources in federal waters prior to the passage of the Atlantic Coastal Act and development of Amendment 2 to the Commission Red Drum FMP, which expanded the red drum management unit to cover the stock throughout its Atlantic coast range. However, because the Atlantic Coastal Act now provides the Secretary authority to regulate the federal red drum fishery in the absence of a Council FMP, the Councils' and NOAA FISHERIES SERVICE' efforts to monitor, adjust, and enforce regulations in the Council Red Drum FMP are unnecessarily burdensome. Consequently, Alternative 1 would directly, negatively affect the administrative environment by continuing to require fishery managers to invest limited time and resources in a fishery management plan that is no longer needed.

Preferred Alternative 2 would repeal the Council Red Drum FMP to provide the Secretary authority to promulgate and enforce in federal waters red drum regulations that are compatible with the Commission Red Drum FMP under the Atlantic Coastal Act and consistent with the national standards set forth in the Magnuson-Stevens Act. The South Atlantic Council, Mid-Atlantic Council, and Atlantic States Commission have determined the statutory authority provided the Secretary under the Atlantic Coastal Act would improve state-federal cooperation in red drum management, and eliminate the unnecessary duplication of management efforts associated with monitoring and enforcing two separate red drum FMPs. **Preferred Alternative 2** is expected to directly, positively affect the administrative environment by streamlining the management process and more effectively coordinating state and federal fishery management.

Alternative 3 would repeal the Council Red Drum FMP and provide the Atlantic Coast states the ability to manage red drum in federal waters of the U.S. Atlantic. Currently, the Atlantic Coastal Act requires Atlantic Coast states implement and enforce in state

waters, regulations established through the Commission Red Drum FMP. However, the Act does not require states to implement and enforce those regulations in federal waters off their states in the absence of a Red Drum FMP established under the authority of the Magnuson-Stevens Act. Consequently, this alternative would require the Atlantic Coast states modify existing regulations or create new regulations if they chose to continue regulating red drum harvest in federal waters. Additionally, the alternative would require regulatory action be coordinated among the states because an individual state is not authorized to regulate the activities of fishing vessels in federal waters unless those vessels are registered in that particular state. Therefore, Alternative 3 would have the greatest direct negative effect on the administrative environment relative to the other alternatives by increasing the number of red drum jurisdictional authorities in federal waters of the U.S. Atlantic, resulting in decreased management efficiency and increased management costs.

4.2 Direct and indirect effects on the biological and physical environment

Alternative 1 (no action) would maintain the status quo management regime, under which the Secretary promulgates and enforces in federal waters of the U.S Atlantic the red drum regulations proposed in the Council Red Drum FMP under the authority of the Magnuson-Stevens Act. Federal regulations implemented under the Council Red Drum FMP directly benefit the biological and physical environment by prohibiting the harvest or possession of red drum in and from federal waters of the U.S. Atlantic and providing a mechanism to mitigate or minimize adverse impacts on red drum habitat. These benefits would continue unchanged under this alternative.

Preferred Alternative 2 would repeal the Council Red Drum FMP to provide the Secretary authority to promulgate and enforce in federal waters red drum regulations that are compatible with the Commission Red Drum FMP under the Atlantic Coastal Act and consistent with the national standards set forth in the Magnuson-Stevens Act. This alternative would not directly or indirectly affect the biological or physical environment because it would not change current restrictions on fishing activities in federal waters of the U.S. Atlantic. Rather it would simply eliminate one of two statutory authorities for managing the red drum resource in federal waters.

Early discussions about the effects of **Preferred Alternative 2** raised the issue of whether current protections to the essential habitat of the red drum resource would continue if Secretarial authority to manage the red drum resource in federal waters were transferred from the Magnuson-Stevens Act to the Atlantic Coastal Act. The Magnuson-Stevens Act requires all FMPs prepared by regional fishery management councils or the Secretary describe and identify essential fish habitat for the managed fishery, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat. The Atlantic Coastal Act does not contain similar protective provisions. However, because those habitats identified as essential to the red drum resource also are identified as essential to

other Council-managed species, current protections would continue unchanged if the Council Red Drum FMP were repealed, unless the essential fish habitat of other Council-managed species was more narrowly defined at a future date to exclude the essential fish habitat of the red drum resource. This is unlikely to occur, as available information indicates the habitat requirements of red drum overlap with those of many other Council-managed species. Therefore, **Preferred Alternative 2** is not expected to adversely affect the essential fish habitat. Federal regulations implemented under the Council Red Drum FMP directly benefit the biological and physical environment by prohibiting the harvest or possession of red drum in and from federal waters of the U.S. Atlantic and providing a mechanism to mitigate or minimize adverse impacts on red drum habitat. These benefits would continue unchanged under this alternative.

Alternative 3 would repeal the South Atlantic Council Red Drum FMP and provide the Atlantic Coast states the ability to manage red drum in federal waters of the U.S. Atlantic. Because state action to manage the red drum resource in federal waters would be voluntary if this alternative were adopted, the potential effects of the alternative on the biological and physical environments are unknown. However, they could not be more beneficial than those associated with Alternatives 1 and 2, which would maintain the current red drum harvest prohibition in federal waters of the U.S. Atlantic, and they may be negative if the states did not take the necessary action to continue the prohibition.

4.3 Direct and indirect effects on the economic and social environment

Alternative 1 (no action) would maintain the status quo management regime, under which the Secretary promulgates and enforces in federal waters of the U.S Atlantic the red drum regulations proposed in the Council Red Drum FMP under the authority of the Magnuson-Stevens Act. Federal regulations implemented under the Council Red Drum FMP directly affect the economic and social environment by prohibiting the harvest or possession of red drum in federal waters of the U.S. Atlantic. The immediate effects of this prohibition are negative because it precludes the development of commercial and recreational red drum fisheries in federal waters. The long-term benefits of this prohibition are positive because it protects adult red drum, which are essential to rebuilding the population and providing larger, sustainable harvests in the future. These short-term and long-term effects would continue unchanged under this alternative.

Preferred Alternative 2 would repeal the Council Red Drum FMP to provide the Secretary authority to promulgate and enforce in federal waters red drum regulations that are compatible with the Commission Red Drum FMP under the Atlantic Coastal Act and consistent with the national standards set forth in the Magnuson-Stevens Act. This alternative would not affect the current prohibition on the harvest or possession of red drum in or from federal waters of the U.S. Atlantic. Consequently, the effects of this prohibition, which are described under the No Action Alternative 1, would continue unchanged. However, **Preferred Alternative 2** would provide an additional direct

economic benefit by eliminating the unnecessary management costs associated with maintaining the Council Red Drum FMP.

Alternative 3 would repeal the Council Red Drum FMP and provide the Atlantic Coast states the ability to manage red drum in federal waters of the U.S. Atlantic. The economic and social environment could be directly affected by this alternative depending upon if and how it affected regulations governing red drum harvest in federal waters of the U.S. Atlantic. If the states maintained current regulations in federal waters it would be on a voluntary basis and would require a large amount of funding to orchestrate state efforts to develop and implement compatible regulations. Regardless of whether all or some states maintained the current regulations prohibiting the harvest or possession of red drum in federal waters or implemented less restrictive regulations, the socioeconomic effects of Alternative 3 are expected to be adverse relative to the effects of Alternatives 1 and 2 because the management regime proposed in Alternative 3 is costly and would require a great deal of coordination.

4.4 Cumulative impacts

Currently, the Atlantic red drum population is managed under two separate authorities. First, the South Atlantic and Mid-Atlantic Councils manage red drum in federal waters of the U.S. Atlantic through the Council Red Drum FMP. Second, the Atlantic States Commission manages red drum in state waters through the Commission Red Drum FMP.

The proposed action would repeal the Council Red Drum FMP to end what has become an unnecessary duplication of management efforts with higher than necessary management costs. Eliminating the Council Red Drum FMP would transfer Secretarial authority to regulate red drum harvest in federal waters from the Council under the Magnuson-Stevens Act to the Atlantic States Commission under Atlantic Coastal Act. Under this proposed management scenario, the Secretary would implement and enforce in federal waters red drum regulations that are compatible with the Commission Red Drum FMP, rather than red drum regulations proposed in the Council Red Drum FMP. The proposed action would not change current restrictions specified in the Council Red Drum FMP, which prohibit the harvest or possession of red drum in and from federal waters of the U.S. Atlantic. The Commission Red Drum FMP also supports these restrictions.

The proposed action is administrative in nature, and is not expected to cause or contribute to any direct or indirect significant impacts on the human environment. Additionally, the proposed action is not dependent on or related to any other foreseeable actions that would impact the same affected environment. The only reasonably foreseeable impacts of the proposed action are economic and administrative benefits related to streamlining and better coordinating management of the Atlantic red drum resource.

4.5 Mitigating measures

The proposed action would end unnecessary duplication of management efforts and reduce management costs without adversely affecting the red drum resource. The current prohibition on the harvest or possession of red drum in or from federal waters of the U.S. Atlantic would continue. No fisherman, fishing sector, related sector, or fishing community would be affected by the action. Consequently, no adverse impacts requiring mitigation are expected. While NOAA FISHERIES SERVICE anticipates no adverse impacts from this action, the agency would be in a position to mitigate any unforeseen impacts by:

- Monitoring the impacts of this action on the fishery and considering public comments received on the proposed rule;
- Continuing to work closely with the Atlantic States Commission's South Atlantic State/Federal Fisheries Management Board, which is responsible for red drum management; and
- Working with the Atlantic States Commission to adjust the Atlantic States Commission Red Drum FMP in response to changing environmental conditions or other factors influencing stock rebuilding.

4.6 Unavoidable adverse impacts

The proposed action is consistent with the objectives of the Atlantic Coastal Act and Magnuson-Stevens Act, and is not expected to have any unavoidable adverse impacts.

4.7 Irreversible and Irretrievable Commitment of Resources

The proposed action is consistent with the objectives of the Atlantic Coastal Act and Magnuson-Stevens Act, and is not expected to have any irreversible or irretrievable commitments of resources. The proposed action does not preclude the Secretary from re-establishing a federal Red Drum FMP under the Magnuson-Stevens Act.

5.0 REGULATORY IMPACT REVIEW

5.1 Introduction

NOAA FISHERIES SERVICE requires a Regulatory Impact Review (RIR) for all regulatory actions that are of public interest. The RIR does three things: (1) It provides a comprehensive review of the level and incidence of impacts associated with a regulatory action; (2) it provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives which could be used to solve the problem; and (3) it ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way.

The RIR also serves as the basis for determining whether any proposed regulations are a "significant regulatory action" under certain criteria provided in Executive Order 12866 (E.O. 12866) and whether the approved regulations will have a "significant economic impact on a substantial number of small business entities" in compliance with the Regulatory Flexibility Act of 1980 (RFA).

5.2 Problems and Objectives

The purpose and need, issues, problems, and objectives of the rule are presented elsewhere in this document and are incorporated herein by reference. In summary, the purpose of this rule is to avoid unnecessary duplication of management efforts, which creates unnecessary costs and is in violation of National Standard 7 of the Magnuson-Stevens Act. To end the unnecessary duplication of management efforts and the higher than necessary management costs, this action: 1) Repeals the Council FMP and 2) moves the Secretary's authority to promulgate and enforce regulations to manage the Atlantic red drum resource in the Atlantic coast EEZ from the Council under the Magnuson-Stevens Act to the Atlantic States Commission under the Atlantic Coastal Act in order to implement the Commissions FMP in the EEZ.

5.3 Methodology and Framework for Analysis

This RIR assesses management measures from the standpoint of determining the resulting changes in costs and benefits to society. To the extent practicable, the net effects of regulatory measures should be stated in terms of producer and consumer surplus, changes in profits, employment in the direct and support industries, and participation by recreational fishers where practicable. This rule does not change existing fishing practices.

5.4 Description of Fisheries

A description of communities in the South Atlantic with substantial involvement in marine fishing is provided in Jepson et al. (2006) and incorporated herein by reference.

5.5 Impacts of Management Measures

Currently, management of the Atlantic red drum fishery is split between two separate management authorities: the Council and the Atlantic States Commission. First, under the authority of the Magnuson-Stevens Act, the Council manages the Atlantic red drum resource in the EEZ through its Red Drum FMP and the Secretary promulgates and enforces regulations to implement that FMP. Second, under the authority of the Atlantic

Coastal Act, the Atlantic States Commission manages red drum in Atlantic state waters and can manage red drum in the EEZ through its red drum FMP, as amended in 2002, and the Secretary can promulgate and enforce regulations to implement the Commission's FMP in their waters. (The Atlantic Coastal Act requires the Commission's FMP to have management and conservation measures that conserve Atlantic red drum throughout its range, which includes the EEZ). Neither alternative affects fishermen, fishing vessels, or existing fishing practices.

5.6 Alternative 1: Maintain two FMPs and keep Secretarial authority to promulgate and enforce regulations under the MSA.

This alternative is the status quo alternative. It will retain the Council and Commission's Red Drum FMPs and would keep the Secretary's authority to promulgate and enforce regulations under the Magnuson-Stevens Act. Consequently, it will continue unnecessary duplication of management efforts.

5.7 Alternative 2: Repeal Council Red Drum FMP and transfer the Secretary's authority to regulate the harvest and possession of the Atlantic red drum resource from the Council under the Magnuson-Stevens Act to the Atlantic States Commission under the Atlantic Coastal Act (Preferred Alternative).

In 1990, two management authorities and two FMPs were necessary to manage the Atlantic red drum resource throughout its range: the Council and its Red Drum FMP, which covered red drum in the Atlantic EEZ, and the Atlantic States Commission and its FMP, which covered red drum in Atlantic State waters, because neither the Council nor the Atlantic States Commission had the legal authority to develop an FMP for Atlantic red drum throughout its range, which includes both State and Federal waters. Now, however, under the Atlantic Coastal Act as amended in 2002, the Commission has the authority to manage red drum throughout its range. Furthermore, under the Atlantic Coastal Act, the Secretary has the authority to promulgate and enforce regulations to implement the Commission's Red Drum FMP in the Atlantic EEZ in the absence of a Federal FMP. Consequently, the Council Red Drum FMP has become an unnecessary duplication of management effort and raises management costs, thus, violating NS 7 of the Magnuson-Stevens Act.

This action will repeal the Council Red Drum FMP and transfer the Secretary's authority to regulate harvest and possession of red drum in and from the EEZ from under the Magnuson-Stevens Act to under the Atlantic Coastal Act, as requested by the Council, Commission, and Mid-Atlantic Fishery Management Council. In so doing, it will end unnecessary duplication of management efforts and reduce management costs without adversely affecting conservation of the red drum resource. Furthermore, a single management authority may result in more efficient and timely management action in the future.

This alternative does not change existing fishing practices, and does not affect fishermen or fishing vessels. Thus, it imposes no costs, while yielding a benefit in the form of lower management costs.

5.8 Alternative 3: Repeal Council Red Drum FMP and transfer authority to regulate fishing for and possession of Atlantic red drum in federal waters to individual states.

Currently, the Atlantic Coastal Act requires Atlantic Coast States to promulgate and enforce regulations to implement the Commission's FMP in their waters. However, it does not require the States to extend those responsibilities to the Atlantic Coast EEZ in the absence of Federal regulations that implement the Commission's FMP. Thus, this alternative depends upon combined voluntary efforts of the States to regulate fishing vessels and enforce those regulations in Federal waters.

The 16 Atlantic Coast States are Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, New Jersey, New Hampshire, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia. Presently, these States do not have regulations concerning harvest or possession of red drum in or from the Atlantic Coast EEZ. This option wholly depends upon the States to voluntarily promulgate and enforce regulations to implement the Commission's FMP in federal waters, which would require States to change existing regulations, which in most cases would require State legislative action. Such legislative action would also require coordination among the States because of jurisdictional limits. Specifically, a State could not regulate the activities of fishing vessels in the Atlantic Coast EEZ that are not registered in that particular State, so all States would have to be actively enforcing their regulations in Federal waters. For instance, Georgia could prohibit Georgia fishing vessels from fishing for or possessing red drum in the Atlantic Coast EEZ, but could not prohibit vessels from other States from fishing for or possessing red drum in those waters. All other States would have to pass and enforce regulations prohibiting fishing for or possessing red drum in the Atlantic Coast EEZ as well, which would be time consuming and costly for these States. Thus, two major problems with this alternative are that: 1) It does not guarantee that the red drum resource will be protected in Federal waters because it is wholly dependent on voluntary State actions, and 2) the costs to the States to promulgate and enforce regulations would be significant in terms of dollars and time.

5.9 Public and Private Cost of Regulations

The preparation, implementation, enforcement, and monitoring of this or any Federal action involves the expenditure of public and private resources which can be expressed as costs associated with the regulations. Costs associated with this amendment include:

NOAA Fisheries administrative costs of document preparation, meetings and review $50,000

Annual law enforcement costs $0

TOTAL $50,000

Law enforcement currently monitors regulatory compliance in this fishery under routine operations and does not allocate specific budgetary outlays to this fishery. No increase in enforcement budgets is expected to be requested in response to this action.

5.10 Determination of Significant Regulatory Action

Pursuant to E.O. 12866, a regulation is considered a "significant regulatory action" if it is expected to result in: (1) an annual effect of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this executive order. A final determination of the significance of this regulatory action will be made by the Secretary of Commerce based on the information included in this RIR and on any additional information deemed relevant.

6.0 REGULATORY FLEXIBILITY ACT ANALYSIS

The Regulatory Flexibility Act (RFA) of 1980 (5 USC 301 et seq.) requires federal agencies to assess the impacts of regulatory actions implemented through notice and comment rulemaking procedures on small businesses, small organizations, and small governmental entities, with the goal of minimizing adverse impacts of burdensome regulations and record-keeping requirements on those entities. Under the RFA, NOAA Fisheries Service must determine whether a proposed fishery regulation would have a significant economic impact on a substantial number of small entities. If not, a certification to this effect must be prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. It has been determined that this action would not have a significant economic impact on a substantial number of small entities; therefore a certification to this effect has been prepared.

6.1 Regulatory Flexibility Act Certification

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 Council to the Atlantic States Commission to reduce management costs by avoiding unnecessary duplication of management efforts. The Atlantic States 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 Atlantic States 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 Atlantic States Commission to change its existing Red Drum FMP, 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 Atlantic States Commission, its member states, or entities operating within the states to change existing practices. The Secretary would maintain the existing prohibition in the EEZ, and NOAA Fisheries Service and the U.S. Coast Guard would continue to enforce that prohibition.

7.0 OTHER APPLICABLE LAW

The Magnuson-Stevens Act (16 USC 1801 et seq.), as amended and reauthorized, governs the conservation and management of ocean fishing in the United States. The purpose of the Magnuson-Stevens Act is to create sustainable fisheries in United States Waters through elimination of overfishing and rebuilding of overfished stocks important to commercial, recreational, and subsistence fisheries. In addition to the Magnuson-Stevens Act, the Council and NOAA Fisheries Service must comply with many applicable laws during the preparation of FMPs and FMP amendments. Major laws pertinent to this fishery management action are summarized below.

7.1 Administrative Procedure Act

All federal rulemaking is governed under the provisions of the Administrative Procedure Act (APA) (5 U.S.C. Subchapter II), which established a "notice and comment" procedure to enable public participation in the rulemaking process. Under the APA, NOAA Fisheries Service is required to publish notification of proposed rules in the *Federal Register* and to solicit, consider, and respond to public comment on those rules before they are finalized. The APA also establishes a 30-day wait period from the time a final rule is published until it takes effect.

7.2 Data Quality Act

The Data Quality Act (DQA) (Public Law 106-443) effective October 1, 2002, requires the government to set standards for the quality of scientific information and statistics used and disseminated by federal agencies. Specifically, the Act directs the Office of Management and Budget (OMB) to issue government wide guidelines that "provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity and procedural integrity of information disseminated by federal

agencies." Such guidelines have been issued, directing all federal agencies to create and disseminate agency-specific standards to: (1) Ensure information quality and develop a pre-dissemination review process; (2) establish administrative mechanisms allowing affected persons to see and obtain correction of information; and (3) report periodically to OMB on the number and nature of complaints received. Pursuant to Section 515 of Public Law 106-554, this information document has undergone a pre-dissemination review by the Southeast Regional Office, Sustainable Fisheries Division, and is available upon request.

7.3 Coastal Zone Management Act

Section 307 (c)(1) of the federal Costal Zone Management Act (CZMA) of 1972, as amended requires that federal activities that affect any land or water use or natural resources of a state's coastal zone be conducted in a manner consistent, to the maximum extent practicable, with approved state coastal management programs. The requirements for such consistency determinations are set for in NOAA regulations at 15 CFR part 930, subpart C. NOAA Fisheries Service has determined this action is consistent with the Coastal Zone Management programs of all states from New Jersey through Florida.

7.4 Endangered Species Act

The Endangered Species Act (ESA) of 1973 (16 U.S.C. Section 1531 et seq.) requires that federal agencies use their authority to conserve threatened and endangered species. They must ensure actions they authorize, fund or carry out, are not likely to harm the continued existence of those species or the habitat designated as critical to their survival and recovery. The ESA requires NOAA Fisheries Service to consult with the appropriate administrative agency (itself or most marine species, the U.S. Fish and Wildlife Service for all remaining species) when proposing an action that "may affect" critical habitat or threatened or endangered species. Consultations are necessary to determine the potential impacts of the proposed action. They are concluded informally when proposed actions may affect but are "not likely to adversely affect" threatened or endangered species or designated critical habitat. Formal consultations, including biological opinions, are required when proposed actions may affect and are "likely to adversely affect" threatened or endangered species or adversely modify designated critical habitat. If jeopardy or adverse modification is found, the consulting agency is required to suggest reasonable and prudent alternatives.

NOAA Fisheries Service, Office of Protected Resources conducted an informal Section 7 consultation and has determined that fishing activities pursuant to this rule are not likely to affect endangered and threatened species or critical habitat in any manor not considered in prior consultations on this fishery. The proposed action would transfer regulatory authority of harvest and possession of red drum in U.S. Atlantic waters from the Magnuson-Stevens Act, to the Atlantic Coastal Act. This action is administrative in

nature and will not change the current restrictions affecting this fishery upon implementation.

7.5 Essential Fish Habitat

Section 305(b)(2) of the amended Magnuson-Stevens Act directs each Federal Agency to consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded or undertaken, by such agency that may adversely affect any EFH identified under the Magnuson-Stevens Act. To address this requirement, a review of the proposed activity was conducted by NOAA Fisheries Service, Habitat Division, who determined that this action is administrative in nature and will not change the current conditions of EFH affected by this fishery upon implementation. Therefore, this action would have no adverse impacts on any areas identified as EFH for U.S. fisheries, and no EFH consultation is needed.

7.6 Marine Mammal Protection Act (MMPA)

The MMPA established a moratorium, with certain exceptions, on the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas, and on the importing of marine mammals and marine mammal products into the Unites States. Under the MMPA, the Secretary (authority delegated to NOAA Fisheries Service) is responsible for the conservation and management of cetaceans and pinnipeds (other than walruses). The Secretary of the Interior is responsible for walruses, sea and marine otters, and polar bears, manatee and dugongs.

The MMPA requires commercial fisheries to be placed in one of three categories, based on the relative frequency of incidental serious injuries and mortalities of marine mammals in each fishery. Category I designates fisheries with frequent serious injuries and mortalities incidental to commercial fishing; Category II designates fisheries with occasional serious injuries and mortalities; and Category III designates fisheries with a remote likelihood or no known serious injuries or mortalities. Red drum are typically caught using a hook-and-line method making it a Category III fishery. However, they are sometimes caught incidentally by gill net gear being used in Category I fisheries. This action does not change how the red drum fishery is prosecuted.

7.7 Executive Order 12612: Federalism

E.O. 12612 requires agencies to be guided by the fundamental federalism principals when formulating and implementing policies that have federalism implications. The purpose of the Order is to guarantee the division of governmental responsibilities between the federal government and the states, as intended by the framers of the Constitution. No federalism issues have been identified relative to this proposed action. The affected states have been closely involved in developing the proposed management measures and

the principal state officials responsible for the fisheries management in their respective states have not expressed federalism related opposition to the proposed action.

7.8 Executive Order 12866: Regulatory Planning and Review

E.O. 12866, signed in 1993, requires federal agencies to assess the costs and benefits of their proposed regulations, including distributional impacts, and to select alternatives that maximize net benefits to society. To comply with E.O. 12866, NOAA Fisheries Service prepares a Regulatory Impact Review (RIR) for all fishery regulatory actions that implement a new FMP or that significantly amend and existing plan. RIRs provide a comprehensive analysis of the costs and benefits to society associated with proposed regulatory actions, that problems and policy objectives prompting the regulatory proposals, and the major alternatives that could be used to solve the problems. The reviews also serve as the basis for the agency's determinations as to whether proposed regulations are a "significant regulatory action" under the criteria provided in E.O. 12866 and whether proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the RFA. A regulation is significant if it is likely to result in an annual effect on the economy of at least $100,000,000 or if it has other major economic effects.

7.9 Executive Order: 12898: Environmental Justice

E.O. 12898 requires that federal agencies conduct their programs, policies, and activities in a manner to ensure that individuals or populations are not excluded from participation in, or denied the benefits of, or subjected to discrimination because of their race, color, or national origin. In addition, and specifically with respect to subsistence consumption of fish and wildlife, Federal agencies are required to collect, maintain, and analyze information on the consumption patters of populations who principally rely on fish and/or wildlife for subsistence.

7.10 Executive Order 12962: Recreational Fisheries

E.O. 12962 requires federal agencies, in cooperation with states and tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities through a variety of methods including, but not limited to, developing joint partnerships; promoting the restoration of recreational fishing areas that are limited by water quality and habitat degradation; fostering sound aquatic conservation and restoration endeavors; and evaluating the effects of federally fended, permitted, or authorized action on aquatic systems and recreational fisheries, and documenting those effects. Additionally, the order establishes a seven member National Recreational Fisheries Coordination Council responsible for, among other things, ensuring that social and economic values of healthy aquatic systems that support recreational fisheries are considered by federal agencies in the course of their actions, sharing the latest resource information and management technologies, and reducing

duplicative and cost-inefficient programs among federal agencies involved in conserving or managing recreational fisheries. The Council is also responsible for developing, in cooperation with federal agencies, states and tribes, a Recreational Fishery Resource Conservation Plan – to include a five-year agenda. Finally, the Order requires NOAA Fisheries Service and the U.S. Fish and Wildlife Service to develop a joint agency policy for administering the ESA.

7.11 Executive Order 13158: Marine Protected Areas

E.O. 13158 requires federal agencies to consider whether their proposed action(s) will affect any area of the marine environment that has been reserved by federal, state, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural or cultural resource within the protected area. This action would have no impact on marine protected areas.

8.0 OTHER CONSIDERATIONS

8.1 National standards

The proposed action would repeal the Council Red Drum FMP and, thus, the federal red drum regulations established under the authority of the Magnuson-Stevens Act in accordance with its ten national standards and other provisions. However, the federal red drum regulations would be re-established under the authority of the Atlantic Coastal Act, which requires restrictions be compatible with the effective implementation of an interstate fishery management plan developed by the Atlantic States Commission, and consistent with the Magnuson-Stevens Act's ten national standards.

8.2 State jurisdiction pertaining to the Atlantic Coastal Act

The proposed action would repeal the Council Red Drum FMP and transfer Secretarial authority to regulate the harvest and possession of red drum in federal waters of the U.S. Atlantic from the Magnuson-Stevens Act to the Atlantic Coastal Act. The Atlantic States Commission is the only regional entity that has authority over fisheries in all Atlantic Coast state waters. Under the Atlantic Coastal Act, Atlantic Coast states must take regulatory actions that implement and enforce the Commission's Red Drum FMP. The Secretary's primary responsibility under the Atlantic Coastal Act is to promulgate and enforce in federal waters regulations that are compatible with Commission's Red Drum FMPs and to ensure their consistency with the national standards for fishery conservation and management set forth in the Magnuson-Stevens Act. Consequently, there should be no conflicts between this action and state and federal management agencies.

8.3 Executive Order 13449; Protection of Striped Bass and Red Drum Fish Populations

On October 20, 2007, President Bush singed Executive Order 13449 encouraging east coast and Gulf states who have not already done so, to designate striped bass and red drum as game fish species. The order also called for a revision of current regulations, as appropriate, to include prohibiting the sale of striped bass and red drum caught in the Atlantic and Gulf of Mexico EEZ. The commercial harvesting and sale of red drum in the South Atlantic EEZ is currently prohibited. Any further revision to the existing regulations will be addressed through a future action independent of this transfer of regulatory authority.

9.0 LIST OF PREPARERS

Dr. Peter Eldridge, State-Federal Liaison Branch, NOAA Fisheries Service, SERO, St. Petersburg, FL.
Heather Blough, Sustainable Fisheries Division, NOAA Fisheries Service, SERO, St. Petersburg, FL.
Julie A. Weeder, Sustainable Fisheries Division, NOAA Fisheries Service, SERO, St. Petersburg, FL.
Kate Michie, Sustainable Fisheries Division, NOAA Fisheries Service, SERO, St. Petersburg, FL.
Dr. Denise Johnson, Sustainable Fisheries Division, NOAA Fisheries Service, SERO, St. Petersburg, FL.
Mr. David Keys, NEPA Coordinator, NOAA Fisheries Service, SERO, St. Petersburg, FL.
Mr. Tom Meyer, State-Federal Division, NOAA Fisheries Service Headquarters, Silver Spring, MD.

10.0 LIST OF AGENCIES AND ORGANIZATIONS CONSULTED

The following agencies were consulted on the provisions of this environmental assessment:

10.1 Coastal Zone Management Programs

New Jersey
Delaware
Pennsylvania
Maryland
Virginia
North Carolina
South Carolina
Georgia

Florida

10.2 Other Agencies, Organizations or Persons

Atlantic States Marine Fisheries Commission
South Atlantic Fishery Management Council
Mid-Atlantic Fishery Management Council

11.0 REFERENCES

Atlantic States Marine Fisheries Commission. 1984. Fisheries Management Report No. 5 of the Atlantic States Marine Fisheries Commission: Fishery Management Plan for Red Drum. Washington, DC. October 1984. 107 p.

Atlantic States Marine Fisheries Commission. 1994. Fisheries Management Report No. Washington, DC. December 1994. 123 p.

Atlantic States Marine Fisheries Commission. 2001a. Public Information Document for Amendment 2 to the ASMFC Fishery Management Plan for Red Drum. Washington, D.C.

Atlantic States Marine Fisheries Commission. 2001b. Interstate Fisheries Management Program Charter. Washington, DC. 23 p.

Atlantic States Marine Fisheries Commission. 2002. Fishery Management Report No. 38 of the Atlantic States Marine Fisheries Commission: Amendment 2 to the Interstate Fishery Management Plan for Red Drum. Washington, DC. 142 p.

Baltz, D.M., J.W. Fleeger, C.F. Rakocinski, and J.N. McCall. 1998. Food, Density, and Micro Habitat: Factors Affecting Growth and Recruitment Potential of Juvenile Saltmarsh Fishes. Environmental Biology of Fish. 53: 89-103.

Bass, R. J. and J. W. Avault, Jr.. 1975. Food habit, length-weight relationship, condition factor, and growth of juvenile red drum, *Sciaenops ocellatus,* in Louisiana. Trans. of the American Fish. Society. 104(1): 35-45.

Beaumarriage, D. S. 1969. Returns from the 1965 Schlitz tagging program, including A cumulative analysis of previous results." Florida Department of Natural Resources Technical Series. 59: 1-38.

Comyns, B.H., J. Lyczkowski-Shultz, D.L. Nieland and C.A. Wilson. 1991. Reproduction of red drum, *Sciaenops ocellatus,* in the North-central Gulf of Mexico: seasonality and spawner biomass. National Oceanic and Atmospheric Administration Technical Report. NOAA FISHERIES SERVICE 95, 17-26.

Dahl, T.E. 2000. Status and trends of wetlands in the conterminous United States 1986 to 1997. U.S. Department of Interior, USFWS, Washington, DC. 81p.

Holland, A.F., G.H.M. Riekerk, S.B. Lerberg, L.E. Zimmerman, D.M. Sanger, G. I. Scott and M. H. Fulton. 1996. Assessment of the impact of watershed development on the nursery functions of tidal creek habitats: In: G.S. Kleppel and M.R. DeVoe (eds.) The South Atlantic Bight land use coastal ecosystems study (LU-CES), p. 28-31. Univ. of Georgia Sea Grant and S.C. Sea Grant Program. Report of a planning workshop.

Holt, J., R. Godbout and C. Arnold. 1981. Effects of temperature and salinity on egg hatching and larval survival of red drum, *Sciaenops ocellata*. Fish. Bull. 79(3): 569-573.

Holt, S.A., C.L. Kitting and C.R. Arnold. 1983. Distribution of young red drum among different sea-grass meadows. Trans. of the Am. Fish. Soc. 112: 267-271.

Holt, G.J., S.A. Holt and C.R. Arnold. 1985. Diel periodicity of spawning in sciaenids. Mar. Ecol. Prog. Ser**.** 27: 1-7.

Holt, S.A., G.J. Holt and C.R. Arnold 1989. Tidal stream transport of larval fishes into non-stratified estuaries. Rapports du Conseil International pour l' Exploration de la Mer 191: 100-104.

Jannke, T. 1971. Abundance of young sciaenid fishes in Everglades National Park, Florida, in relation to season and other variables, University of Miami Sea Grant Technical Bulletin No. 11. 127 p.

Jepson, M., K. Kitner, A. Pitchon, W.W. Perry, and B. Stoffle. 2006. Potential fishing communities in the Carolinas, Georgia, and Florida: An effort in baseline profiling and mapping. NOAA, NMFS, St. Petersburg, FL.http://sero.NOAA Fisheries Service.noaa.gov/sf/socialsci/pdfs/SA%20Fishing%20Community%20Report.pdf

Johnson, G.D. 1978. Development of fishes of the mid-Atlantic Bight. An atlas of egg, larval and juvenile stages. Vol IV. U.S. Fish and Wildlife Service, Biological Services Program. FSW/OBS-78/12: 190-197.

Johnson, D.R. and N.A. Funicelli. 1991 Estuarine spawning of the red drum in Mosquito Lagoon on the east coast of Florida. Estuaries 14: 74-79.

Lyczkowski-Shultz, J. and J.P. Steen, Jr. 1991. Diel vertical distribution of red drum, *Sciaenops ocellatus,* larvae in the northcentral Gulf of Mexico. Fish. Bull. 89: 631-641.

Mansueti, R. J. 1960. Restriction of very young red drum, (*Sciaenops ocellata*) to shallow estuarine waters of the Chesapeake Bay during late autumn. Ches. Science 1: 207-210.

Marks, R.E., Jr. and G. P. DiDomenico. 1996. Tagging studies, maturity, and spawning seasonality of red drum (*Sciaenops ocellatus*) in North Carolina. Completion Report Grant F-43, 1-39.

McGovern, J.C. 1986. Seasonal recruitment of larval and juvenile fishes into impounded and non-impounded marshes. MS Thesis. College of Charleston, Charleston, SC.

Mercer, L. P. 1984. A biological and fisheries profile of red drum, *Sciaenops ocellatus*. North Carolina Dept. of Natural Resources and Community Development, Special Scientific Report No. 41: 89p.

Miles, D. W. 1950. The life histories of spotted seatrout, *Cynoscion nebulosus*, and the redfish, *Sciaenops ocellatus*. Texas Game, Fish and Oyster Commission, Marine Laboratory Annual Report (1949-1950): 66-103.

Miller, J.M., J.P. Read and L.J. Pietrafesa. 1984. Pattern, mechanisms and approaches to the study of migrations of estuarine-dependent fish larvae and juveniles. In: McCleave, J.D., G. P. Arnold, J.J. Dodson and W.H. Neill (eds.) Mechanisms of migrations in fishes. Plenum Press, NY.

Miller, J.M. 1988**.** Physical processes and the mechanisms of coastal migrations of immature marine fishes. In: M.P. Weinstein (ed.) Larval fish and shellfish transport through inlets. Am. Fish. Society, Bethesda, MD: 68-76.

Murphy, M. D. 2002**.** Stock assessment of red drum, *Sciaenops ocellatus*, in Florida: status of the stocks through 2000. Report from the Florida Marine Research Institute to the Florida Fish and Wildlife Commission, Division of Marine Fisheries: 32 p.

Murphy, M.D. and R.G. Taylor 1990. Reproduction, growth and mortality of red drum, *Sciaenops ocellatus*, in Florida waters. Fish. Bull. 88(4): 531-542.

Music, J.L., Jr. and J.M. Pafford. 1984. Population dynamics and life history aspects of major marine sportfishes in Georgia's coastal waters. Georgia DNR, Coastal Resources Division Tech. Report 38: 382 p.

Neill, W.H. 1987. Environmental requirements of red drum. In: Chamberlain, G. W. (ed.) Manual on Red Drum Aquaculture, Preliminary draft of invited papers presented at the Production Short Course of the 1987 Red Drum Aquaculture Conference on 22-24 June, 1987 in Corpus Christi, Texas. Texas A & M University, College Station, TX: 396 p.

Nelson, D.M., E.A. Irlandi, L.R. Settle, M.E. Monaco and L. Coston-Clements. 1991 Distribution and abundance of fishes and invertebrates in southeast estuaries. ELMR Report No. 9, NOAA/NOS Strategic Environmental Assessments Division, Silver Springs, MD: 167 p.

Nicholson, N. and S.R. Jordan. 1994. Biotelemetry study of red drum in Georgia. Georgia DNR, Brunswick, GA: 64 p.

Osburn, H.R., G.C. Matlock and A.W. Green. 1982. Red drum (*Sciaenops ocellatus*) movements in Texas bays. Contributions in Marine Science 25: 85-97.

Pafford, J.M., A.G. Woodward and N. Nicholson. 1990. Mortality, movement and growth of red drum in Georgia. Final report. Georgia Dept. of Natural Resources, Brunswick, GA: 85 p.

Pearson, J. C. 1929. Natural history and conservation of the redfish and other commercial sciaenids on the Texas coast. Bulletin U.S. Bureau of Fish. 44:129-214.

Peters, K.M. and R. H. McMichael. 1987. Early life history of the red drum, *Sciaenops ocellatus* (Pisces: Sciaenidae), in Tampa Bay, Florida. Estuaries 10(2): 92-107.

Rooker, J.R. and S.A. Holt 1997. Utilization of subtropical seagrass meadows by newly settled red drum, *Sciaenops ocellatus*: patterns of distribution and growth. Marine Ecology Progress Series 158: 139-149.

Ross, J.L., T.M. Stevens and D.S. Vaughan. 1995. Age, growth, mortality, and reproductive biology of red drum in North Carolina waters. Trans. Am. Fish. Soc. 124: 37-54.

Ross, J.L. and T.M. Stevens. 1992. Life history and population dynamics of red Drum (*Sciaenops ocellatus*) in North Carolina waters. Marine Fisheries Research. Completion Report, Project F-29. North Carolina DMP, Morehead City, NC.

South Atlantic Fishery Management Council. 1990a. The Atlantic Coast Red Drum Fishery Management Plan. SAFMC, Charleston, SC. July, 1990: 106 p.

South Atlantic Fishery Management Council. 1990b. Profile of the Atlantic coast red drum fishery and source document for the Atlantic coast red drum fishery management plan. SAFMC, Charleston, SC.

South Atlantic Fishery Management Council. 1998. Habitat plan for the South

Atlantic region: essential fish habitat requirements for fishery management plans of the South Atlantic Fishery Management Council. SAFMC, Charleston, SC: 457 p. + appendices.

Serafy, J.E., K.C. Lindemann, T.E. Hopkins and J.S. Ault. 1997. Effects of freshwater canal discharges on subtropical marine fish assemblages: field and laboratory observations. Mar. Ecol. Prog. Ser. 160: 161-172.

Setzler, E.M. 1977. A quantitative study of the movement of larval and juvenile Sciaenidae and Engraulidae into the estuarine nursery grounds of Doboy Sound, Sapelo Island, Georgia. MS Thesis. University of Georgia.

Simmons, E.G. and J.P. Breuer, 1962. A study of redfish (*Sciaenops ocellatus*) Linnaeus) and black drum (*Pogonias cromis* Linnaeus). Publications of the Institute of Marine Science, University of Texas 8: 184-211.

Vaughan, D.S. 1996. Status of the red drum stock on the Atlantic coast: stock assessment report for 1995. NOAA Tech. Mem. NMFS-SEFC 380: 50 p.

Vaughan, D.S. and J. T. Carmichael. 2000. Assessment of Atlantic red drum for 1999: northern and southern regions. NOAA Tech. Mem. NMFS-SEFSC 447: 54 p + appendix. U.S. DOC, NOAA, Center for Coastal Fisheries and Habitat Research, Beaufort, NC.

Weinstein, M.P. 1979. Shallow marsh habitats as primary nurseries for fishes and shellfish, Cape Fear, North Carolina. Fish. Bull. 77(2): 339-357.

Wenner, C.A., W.A. Roumillat, J. Moran, M.B. Maddox, L.B. Daniel III, and J.W. Smith. 1990. Investigations on the life history and population dynamics of marine recreational fishes in South Carolina: Part 1. South Carolina DNR, Marine Resources Research Institute, Final Report Project F-37: 179 p.

Wenner, C. A. 1992. Red drum: natural history and fishing techniques in South Carolina. Educational Report No. 17. South Carolina DNR, Marine Resources Division, Charleston, SC.

Woodward, A.G. 1994. Tagging studies and population dynamics of red drum in Georgia. Final Report. Georgia Dept. of Natural Resources, Brunswick, GA: 71 p.

Yokel, B. 1966. A contribution to the biology and distribution of red drum, *Sciaenops ocellata*. MS Thesis, University of Miami, Miami, FL: 166 p.