

community at reference coordinates 31–14–20 NL and 96–23–45 WL.

**DATES:** Effective June 1, 2009.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MB Docket No. 08–196, adopted April 15, 2009, and released April 17, 2009. The *Notice of Proposed Rule Making* proposed the allotment of Channel 296A at Marquez, Texas. See 73 FR 66588, published November 10, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

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

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

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

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

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Marquez, Channel 296A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E9–10200 Filed 5–1–09; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 402

**RIN 1018–AW73**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 402

**[0808011023–9788–04]**

**RIN 0648–AX87**

### Interagency Cooperation Under the Endangered Species Act

**AGENCIES:** Fish and Wildlife Service, Department of the Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** With this final rule, the Department of the Interior and the Department of Commerce amend regulations governing interagency cooperation under the Endangered Species Act of 1973, as amended (ESA). In accordance with the statutory authority set forth in the 2009 Omnibus Appropriations Act (Pub. L. 111–8), this rule implements the regulations that were in effect immediately before the effective date of the regulation issued on December 16, 2008, entitled “Interagency Cooperation Under the Endangered Species Act.”

**DATES:** *Effective Date:* This rule is effective May 4, 2009. Submit any comments on potential improvements to our regulations on interagency consultation under the ESA by August 3, 2009.

**ADDRESSES:** You may submit comments requested in this rule by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: 1018–AT50; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mailed or faxed comments. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

#### FOR FURTHER INFORMATION CONTACT:

Office of the Assistant Secretary for Fish and Wildlife and Parks, 1849 C Street, NW., Washington, DC 20240; telephone: 202–208–3928; or James H. Lecky, Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: 301–713–2332.

#### SUPPLEMENTARY INFORMATION:

#### Background

In 1986, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the “Services”) issued regulations to guide and govern the consultation process required under section 7 of the Endangered Species Act (ESA). See 51 FR 19926 (June 3, 1986) (amending 50 CFR Part 402) (“1986 regulations”). These regulations defined key terms and described the consultation process required to be followed by Federal action agencies when they take an action that “may affect” listed species or critical habitat. On December 16, 2008, the Departments of the Interior and Commerce issued joint regulations that modified the 1986 regulations. The primary purposes of these revisions were to: (1) Redefine several definitions that are central to the consultation process; (2) narrow the circumstances when Federal agencies are required to consult with the Services; and (3) establish timeframes for the informal consultation process. These regulations became effective January 15, 2009. See 73 FR 76272 (Dec. 16, 2008) (amending 50 CFR part 402) (“new regulations”).

On March 3, 2009, President Obama issued a memorandum to the heads of the executive departments and agencies. In that memorandum, the President noted that the “Federal Government has long required a process of broad interagency consultation” in order to ensure “the application of scientific and technical expertise to decisions that may affect” listed species. The President noted that the new regulations modified these requirements. But, as the President observed, the new regulations afford discretion to Federal action agencies to continue the previous practice of consulting with, and obtaining the written concurrence of, the Services. The President requested that the Secretaries of the Interior and Commerce review the new regulations

and determine whether to undertake new rulemaking procedures. Further, the President requested that the heads of all agencies exercise their discretion to follow the “prior longstanding” consultation and concurrence practices.

Per the President’s request, the Departments have reviewed the new regulations and evaluated whether to undertake new rulemaking regarding the section 7 consultation processes and standards. Congress enacted special authority for the Secretary of the Interior and the Secretary of Commerce that authorized us to withdraw these new regulations and reinstate the pre-existing ESA section 7 consultation regulations without following the notice and comment procedures of the Administrative Procedure Act or other ordinarily applicable procedures.

We believe that it is appropriate to withdraw the new regulations and return to the “status quo ante” pending a comprehensive review of the ESA section 7 consultation regulations. Recognizing the widespread public concern about the process in the promulgation of the new regulations, the Departments agree that a thoughtful, in-depth, and measured review would be beneficial before a determination is made regarding potential changes to the section 7 consultation regulations. The section 7 consultation process is important for the conservation of species and critical habitat and involves complex and highly technical issues; the input from career conservation biologists who have experience with the section 7 consultations and who can provide scientific and technical expertise should, of course, be a key part of the process. In addition, any rulemaking process should be accorded a sufficient period of time to provide for careful, meaningful involvement of the affected public and to ensure consistency with the purposes of the ESA. This thorough review will allow the Departments to identify a range of options and implement improvements, if appropriate.

In light of the President’s memorandum, withdrawing the regulations will not disadvantage federal agencies or applicants for federal permits and licenses, who already have been requested to use the consultation procedures that were in effect prior to the new regulations. Returning to the status quo ante will allow time for a thorough and thoughtful review while still ensuring that listed species and critical habitat are not impacted negatively. To begin this process, as described below, we are requesting comments from the public to help us identify potential options and

improvements to the section 7 regulations that may be appropriate.

Based on the authority provided by section 429(a)(1) and (2) of the 2009 Omnibus Appropriations Act (Pub. L. 111–8), we are hereby withdrawing the new regulations (the December 16, 2008, final rule). Specifically, section 429 authorizes us to withdraw the new regulations “without regard to any provision of statute or regulation that establishes a requirement for such withdrawal.” For the reasons discussed above, we believe withdrawing the regulations immediately is the best course of action for the protection of listed species and critical habitat. We, therefore, are not requesting comments on the withdrawal of the new regulations. As discussed, below, however, we are requesting comments from the public as to any changes that potentially may be appropriate to the section 7 regulations. Any further changes made to the section 7 regulations will be proposed with notice and comment consistent with the Administrative Procedure Act.

Further, as directed by section 429(a)(2)(b), we are implementing the section 7 regulations (50 CFR Part 402) as they stood before the effective date of the December 16, 2008, final rule, concurrent with withdrawal of the new regulations, in order to ensure there is no regulatory void and thus to protect the conservation of the species and their habitat as we review the appropriateness of any regulatory changes. By this action, the regulations at 50 CFR part 402 are returned to the version that was in effect on January 14, 2009. This withdrawal does not affect any actions taken prior to the effective date of this rule.

**Public Comments**

We are requesting the public’s input regarding potential changes to the section 7 consultation regulations. We welcome all comments related to ways to improve the section 7 regulations while retaining the purposes and policies of the ESA. By way of example, we solicit comments on: The applicability of section 7, the definitions of “jeopardy” and “adverse modification”, the definition of “effects of the action”, the definition of “action area”, the appropriate standard of causation, the informal consultation process, methods to streamline both formal and informal consultation, flexibility for “low effect” consultations, formal consultation requirements, programmatic consultations, consideration of effects related to global climate change, incidental take statements, and reinitiation standards.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Classification**

Under Public Law 111–8, this action is exempt from any provision of statute or regulation establishing a requirement that would otherwise apply.

**List of Subjects in 50 CFR Part 402**

Endangered and threatened species.

Dated: April 27, 2009.

**Ken Salazar,**

*Secretary of the Interior.*

Dated: April 27, 2009.

**Gary Locke,**

*Secretary of Commerce.*

■ For the reasons set forth in the preamble, the Departments amend part 402, title 50 of the Code of Federal Regulations as follows:

**PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED**

■ 1. The authority citation for part 402 continues to read as follows:

**Authority:** 16 U.S.C. 1531, *et seq.*

■ 2. In § 402.02 revise the definitions for “Biological assessment,” “Cumulative effects,” and “Effects of the action” to read as follows:

**§ 402.02 Definitions.**

\* \* \* \* \*

*Biological assessment* refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation potential effects of the action on such species and habitat.

\* \* \* \* \*

*Cumulative effects* are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.

\* \* \* \* \*

*Effects of the action* refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other

activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

\* \* \* \* \*

■ 3. Revise § 402.03 to read as follows:

**§ 402.03 Applicability.**

Section 7 and the requirements of this part apply to all actions in which there is discretionary Federal involvement or control.

■ 4. Revise § 402.13 to read as follows:

**§ 402.13 Informal consultation.**

(a) Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required. If during informal consultation it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary.

(b) During informal consultation, the Service may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat.

■ 5. In § 402.14, revise paragraphs (a) and (b)(1) to read as follows:

**§ 402.14 Formal consultation.**

(a) Requirement for formal consultation. Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except

as noted in paragraph (b) of this section. The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request.

(b) *Exceptions.* (1) A Federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under § 402.12 or as a result of informal consultation with the Service under § 402.13, the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat.

\* \* \* \* \*

[FR Doc. E9-10203 Filed 5-1-09; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 090206144-9697-02]

RIN 0648-AX49

**Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2009 Atlantic Bluefish Specifications**

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

**ACTION:** Final rule; final specifications for the 2009 Atlantic bluefish fishery.

**SUMMARY:** NMFS issues final specifications for the 2009 Atlantic bluefish fishery, including state-by-state commercial quotas, a recreational harvest limit, and recreational possession limits for Atlantic bluefish off the east coast of the United States. The intent of these specifications is to establish the allowable 2009 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the Atlantic Bluefish Fishery Management Plan (FMP).

**DATES:** Effective June 3, 2009, through December 31, 2009.

**ADDRESSES:** Copies of the specifications document, including the Environmental Assessment (EA) and the Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room

2115, Federal Building, 300 South Street, Dover, DE 19901 6790. The specifications document is also accessible via the Internet at <http://www.nero.noaa.gov>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. The FRFA consists of the IRFA, public comments and responses contained in this final rule, and a summary of impacts and alternatives contained in this final rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930 2298, and on the Northeast Regional Office's website at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Tobey Curtis, Fishery Policy Analyst, (978) 281-9273.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations implementing the FMP are prepared by the Mid-Atlantic Fishery Management Council (Council) and appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The management unit for bluefish (*Pomatomus saltatrix*) is U.S. waters of the western Atlantic Ocean.

The FMP requires that the Council recommend, on an annual basis, total allowable landings (TAL) for the fishery, consisting of a commercial quota and recreational harvest limit (RHL). A research set aside (RSA) quota is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors. The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee (Monitoring Committee) and Scientific and Statistical Committee (SSC) review and make recommendations based on the best available data, including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the NMFS Northeast Regional Administrator (RA). This FMP is a joint plan with the Atlantic States Marine Fisheries Commission (Commission); therefore, the Commission meets during