



President Bush Issues Executive Order on the Protection of Striped Bass and Red Drum Populations

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On October 20, 2007, President George W. Bush signed an executive order to ensure the execution of the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Coastal Fisheries Cooperative Management Act, and the Atlantic Striped Bass Conservation Act and to conserve striped bass and red drum. The order sets a U.S. policy for the conservation of “striped bass and red drum for the recreational, economic, and environmental benefit of the present and future generations of Americans, based on sound science and in cooperation with State, territorial, local, and tribal governments, the private sector, and others, as appropriate.”

The order directs the Secretary of Commerce to implement this policy in three ways. First, the Secretary is to encourage, *as appropriate*, state and local laws supportive of this policy of conservation, including state designation as gamefish. Second, the Secretary must revise current regulations, *as appropriate*, to prohibit the sales of the fish caught within the Exclusive Economic Zone (EEZ) of the United States in the Atlantic Ocean and the Gulf of Mexico. Finally, the status of striped bass and red drum populations must be periodically reviewed.

Practical Impact of the Executive Order

It is unclear what the practical impact of the order will be. The EEZ is currently closed to commercial and recreational fishing for striped bass, although NOAA Fisheries does not consider striped bass to be overfished. As for red drum, possession and harvest is prohibited in federal waters along the South Atlantic coast and in the Gulf of Mexico. There are commercial and recreational fisheries in some state waters for both species, however. If, at some point in the future, these fisheries are reopened in the EEZ, this order may have the effect of banning commercial harvest.

Legal Impact of the Executive Order

The legal impact of the order is also unclear at this time. Article II of the Constitution states that the President “shall take care that the Laws be faithfully executed.” The President may do this through executive orders published in the Federal Register. Executive orders do not change existing law, but rather express policies and instruct agencies on how the President would like these policies to be implemented.

Agencies, on the other hand, have discretionary authority to carry out their responsibilities even when faced with a directive from the President. Agencies must act within the limits of the law. This means that the Secretary of Commerce and NOAA Fisheries must stay within the confines of the Magnuson-Stevens Act and other federal laws when implementing the policy outlined in the President's Executive Order. During the President's speech announcing the order, he recognized that the Secretary will have "to work with our fishery management councils and commissions . . . to prohibit the sale of striped bass and red drum caught in federal waters." Furthermore, the order states that the policy should be implemented "as appropriate." Presumably, "as appropriate" means within the bounds of applicable law.

Any changes to existing law, therefore, would require amendments to fishery management plans and issuance of new regulations, a process which generally takes two years. NOAA Fisheries does have authority under the Magnuson-Stevens Act to take emergency actions or interim measures to address an emergency or overfishing, regardless of whether there is a fishery management plan in place. Emergency regulations must still be published in the Federal Register and only remain in effect for 180 days, although emergency rules can be extended longer in certain circumstances.

For the full text of the Executive Order and President Bush's remarks at the signing, please visit <http://www.whitehouse.gov/news/releases/2007/10/20071020-3.html>.

Supporters of the President's action include the Coastal Conservation Association. Details of its position are available at <http://www.joincca.org/press%20releases/2007/EO.html>.

The National Fisheries Institute has spoken out against the E.O. in a statement available at http://www.aboutseafood.com/media/press_release_detail~id~129.cfv

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