

avoid the interference by operating on another BAS channel. Moreover, this interference would be temporary because all the BAS licensees are scheduled to relocate by September 7, 2009 to spectrum that does not conflict with MSS.

21. The proposed rule changes would also affect the interest of the two 2 GHz MSS operators, TerreStar and ICO. Under the current rules TerreStar and ICO cannot begin operations in this band until after the top 30 markets have been relocated. Consequently, modifying the top 30 market rule to allow them to enter the band sooner will provide the 2 GHz MSS operators with a benefit and not a burden.

*E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

22. Our primary concern in this proceeding continues to be balancing the needs of incumbent BAS licensees to provide service without suffering harmful interference and the introduction of new MSS in a timely manner. If the Sprint Nextel *et al.*, plan for BAS relocation is successfully implemented, ICO's and TerreStar's ability to begin operation in the 2 GHz MSS band could be delayed until September 2009 under the current rules. On the other hand, if BAS relocation of the top 30 markets and fixed BAS links in all markets is completed earlier than is now anticipated but before all BAS markets are relocated, interference between MSS, including ATC, and BAS is likely to occur in those markets not yet relocated. In the latter case, MSS would have to accept interference from the remaining BAS users until they are relocated. It seeks comment on whether to maintain this non-interference requirement. The Commission also seeks comment on whether it should modify other requirements for MSS entry into the 2 GHz MSS band.

*F. Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rules*

23. None.

**Ordering Clauses**

24. The *Further Notice of Proposed Rule Making* is adopted. This authority is taken pursuant to Sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 CFR 154(i) and (j), and Section 1.3 of the Commission's Rules.

25. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Further Notice of Proposed Rulemaking*, including the Initial

Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. E8-6494 Filed 3-28-08; 8:45 am]

**BILLING CODE 6712-01-P**

**NATIONAL TRANSPORTATION SAFETY BOARD**

**49 CFR Part 830**

**Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records**

**AGENCY:** National Transportation Safety Board (NTSB).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The NTSB is proposing to amend its regulations concerning notification and reporting requirements with regard to aircraft accidents or incidents. The existing version of the definitions section does not address unmanned aircraft accidents; therefore, the NTSB proposes to update the definitions section in order to define "unmanned aircraft accident."

**DATES:** Submit comments on or before June 30, 2008.

**ADDRESSES:** You may send written comments using any of the following methods:

1. *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

2. *Mail:* Mail comments concerning this proposed rule to Dana Schulze, AS-IO, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594-2000.

3. *Fax:* (202) 314-6319, Attention: Dana Schulze.

4. *Hand Delivery:* 6th Floor, 490 L'Enfant Plaza, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dana Schulze, Office of Aviation Safety, (202) 314-6323.

**SUPPLEMENTARY INFORMATION:**

**Statutory and Regulatory Evaluation**

This rule proposes to add a definition of "unmanned aircraft accident" alongside the existing definition of "aircraft accident," to include a requirement to report unmanned aircraft accidents under the notification requirements of 49 CFR 830.5(a), which requires immediate notification of any

aircraft accident, as defined at 49 CFR 830.2. The NTSB also seeks to add a reference to this new definition in the existing definition of "aircraft accident." These additions will enhance aviation safety by providing the NTSB with notification of events in which persons are injured or the aircraft sustains substantial damage. Such reports will enable the NTSB to conduct investigations, influence corrective actions, and propose safety recommendations with regard to unmanned aircraft in a timely manner. In addition, these reports will assist the NTSB with safety studies and analysis of any trends in aviation transportation that could affect aviation safety.

The NTSB has considered whether this rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and has determined that this rule does not meet the definition of "significant regulatory action." In particular, the rule will not: have an annual effect on the economy of \$100 million or more or adversely affect the economy; create a serious inconsistency or interfere with an action that another agency has taken or plans to take; materially alter the budgetary impact of any grants, entitlements, or the like; or raise novel legal or policy issues. As such, Executive Order 12866 does not require the NTSB to complete an assessment of the potential costs and benefits under section 6(a)(3) of that Order.

Likewise, the NTSB has analyzed this rule under the Unfunded Mandates Reform Act, 2 U.S.C. 1501-1571. The NTSB acknowledges that this proposed reporting requirement may affect state, local, and tribal entities because those entities may utilize unmanned aircraft for a variety of purposes. However, the NTSB maintains that requiring such entities to report to the NTSB transportation accidents arising from the operation of unmanned aircraft will not result in any expenditure by any private sector organization or entity that would exceed \$100 million. As such, the NTSB asserts that the Unfunded Mandates Reform Act does not prevent the NTSB's enactment of this proposed regulation. Likewise, the NTSB has analyzed this proposed rule as required by the National Environmental Policy Act, 42 U.S.C. 4321-4347, and has determined that this proposed regulation does not necessitate further analysis under the provisions of the National Environmental Policy Act.

In addition, the NTSB has considered whether this rule would have a significant economic impact on a substantial number of small entities,

under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. Indeed, the changes to part 830 that the NTSB proposes herein will only result in a potential increase in the number of reports that small entities must submit to the NTSB; the NTSB does not anticipate that submitting such reports will have a significant economic impact on small entities. Moreover, in accordance with 5 U.S.C. 605(b), the NTSB has submitted this certification to the Chief Counsel for Advocacy at the Small Business Administration.

This rule proposes no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) but will require that the public notify the NTSB of more events. As such, the NTSB has submitted this NPRM to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. The NTSB will continue to use Form No. 6120.1 to receive notification of events that are reportable under 49 CFR Part 830. OMB last approved the use of Form No. 6120.1 on June 30, 2006, and this approval will expire on June 30, 2009 (OMB Control No. 3147–0001). The NTSB estimates that the number of respondents for the submission of this notification using the aforementioned form will increase by a very modest amount: approximately five additional reports per year. As such, after this rule becomes effective, the NTSB anticipates receiving reports on Form No. 6120.1 from approximately 2,205 respondents per year; this estimate includes approximately 2,200 reports on Form 6120.1 that the NTSB receives from all notification requirements in 49 CFR Part 830, as well as approximately five additional reports that the NTSB expects to receive each year due to the new definition that is the subject of this NPRM. All other information regarding the use of Form No. 6120.1 will remain the same. The public may submit comments regarding the collection of this information to the OMB desk officer for the NTSB.

The NTSB recognizes that Congress's intent in promulgating the Paperwork Reduction Act was to reduce the burden on individuals and ensure that the information collected would not be duplicative of other federal information collections. The NTSB notes that some individuals or entities from which the NTSB must receive notification of an event under part 830 may also be required to report the event to the Federal Aviation Administration (FAA). However, this reporting is currently not

required under FAA regulations but is required in individual agreements authorizing the operation of unmanned aircraft. See 72 FR 6689 (Feb. 13, 2007). Therefore, any duplicative reporting that may occur will be uncommon, as it will be limited to individual agreements into which the FAA has entered with specific operators or parties and will occur infrequently at the NTSB, given the NTSB's estimate that it will receive approximately five additional reports per year. In any event, the NTSB asserts that such duplicative reporting, while minimal, is necessary for the NTSB to fulfill its statutory mission of improving safety. The NTSB's response to unmanned aircraft accidents could include immediately dispatching an investigator to the location of the damaged aircraft to evaluate the circumstances of the accident and observe various components of the aircraft, or other locations where perishable information exists or requires collection for the investigation. Such a response would not be possible if the operator only reported the event to the FAA. The NTSB also notes that it has experienced impediments to some investigations, such as an inability to recover and examine critical parts, when the NTSB belatedly received notification of the event. Overall, the NTSB does not anticipate that duplicative reporting will be commonplace, and, to the extent that duplicate reports occur, the NTSB asserts that such reports are necessary and will not cause an undue burden on the public.

Moreover, the NTSB does not anticipate that this rule will have a substantial, direct effect on State or local governments or preempt state law; as such, this rule does not have implications for federalism under Executive Order 13132, Federalism. This rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this rule under: Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights; Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note.

The NTSB has concluded that this rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this rule prompt further consideration with regard to such requirements. With regard to these aforementioned legal considerations, the NTSB notes that this proposed requirement is an extension of its existing requirements for the reporting of manned aircraft accidents; as such, the NTSB's analyses of the aforementioned statutes and Executive Orders is analogous to its considerations with regard to notification of other aircraft accidents in which a person is on board the aircraft.

#### **Discussion of Proposed Addition to Section 830.2**

The NTSB proposes to add the definition of "Unmanned aircraft accident" by adding the following text: "Unmanned aircraft accident means an occurrence associated with the operation of a public or civil unmanned aircraft that takes place between the time that the aircraft is activated with the purpose of flight and the time that the aircraft is deactivated at the conclusion of its mission, in which any person suffers death or serious injury, or in which the aircraft receives substantial damage." The NTSB also proposes to add a brief reference at the end of the existing definition of "aircraft accident" in section 830.2, which will state: "For purposes of this part, the definition of 'aircraft accident' includes 'unmanned aircraft accident,' as defined herein."

#### *Interpretation of Proposed Definition*

The NTSB's reference to "substantial damage" in the proposed definition is appropriate given that substantial damage includes "damage or failure to an aircraft that adversely affects the structural strength, performance, or flight characteristics of the aircraft, and would normally require major repair or replacement of the affected component." The NTSB does not propose altering the definition of "substantial damage" and will apply the full definition, including all exclusions that the definition contains, to the proposed addition of unmanned aircraft accidents. Likewise, the NTSB does not intend to alter its definition of the term, "serious injury," which is also defined in section 830.2. Overall, the NTSB notes that this proposed addition does not contravene, alter, or in any way affect any of the other terms that section 830.2 defines.

The NTSB's proposed addition to the existing definition of "aircraft accident," to include a reference to unmanned aircraft accidents, will

ensure that the reporting requirement within section 830.5 unambiguously applies to aircraft accidents in which manned and unmanned aircraft are involved. Except with regard to the NTSB's proposed addition of this reference via a short sentence at the end of the definition of "aircraft accident," this reference does not change the existing interpretation or applicability of "aircraft accident."

Moreover, the NTSB's use of the term "aircraft" is similarly appropriate given that this reference does not contradict or supersede the existing definition of "aircraft" at 14 CFR 1.1 (which defines "aircraft" as "a device that is used or intended to be used for flight in the air"). Similarly, the NTSB intends its reference to the term "unmanned aircraft" to be consistent with the FAA's definition of "unmanned aircraft" at 72 FR 6689 (Feb. 13, 2007), wherein the FAA defines an "unmanned aircraft" as "a device that is used, or is intended to be used, for flight in the air with no onboard pilot." Further, the NTSB intends for this proposed rule to apply to the category of unmanned aircraft used as public aircraft or civil aircraft, not those used as model aircraft; hence, the NTSB has included the terms "civil" and "public" within this definition and incorporates the existing definitions of those terms in section 830.2 as applicable to this definition. Moreover, the incorporation of these terms is consistent with the FAA's categorization of unmanned aircraft, as described at 72 FR 6689, 6690 (Feb. 13, 2007) (explaining three unique ways in which an operator may obtain authority to operate three types of unmanned aircraft, which include public, civil, and model aircraft), and conforms to the statutory directive that Congress issued to the NTSB, at 49 U.S.C. 1131(a)(1)(A) and 1132(a) (directing the NTSB to investigate civil and public aircraft accidents). In summary, the text of the NTSB's proposed definition does not affect and is not inconsistent with any of the definitions that the FAA has promulgated; as such, the NTSB does not anticipate that this definition will create ambiguity.

#### *Effect of Proposed Definition on Transportation Safety*

The Independent Safety Board Act of 1974 (codified, as amended, at 49 U.S.C. 1101–1155) directs the NTSB to investigate the facts, conditions, and circumstances relating to transportation accidents and to recommend steps to reduce or eliminate such accidents. The NTSB also has the authority to conduct special studies and investigations on matters pertaining to safety and for the

prevention of accidents. The NTSB anticipates that this proposed amendment will enhance aviation safety by providing the NTSB with direct and timely notification of events that involve safety concerns regarding unmanned aircraft. Such notification will consequently enable the NTSB to conduct investigations, through which the NTSB can influence or enable necessary corrective actions in a timely manner. Such corrective actions function to prevent future transportation accidents and improve safety. The NTSB also anticipates that this regulatory amendment will assist the NTSB in improving safety via the agency's safety recommendation process, under 49 U.S.C. 1116, 1131, and 1136.

The NTSB notes that congress has directed the NTSB to carry out special studies and investigations concerning transportation safety and evaluate the effectiveness of transportation safety consciousness of other departments, agencies, and instrumentalities in the interest of improving transportation safety. See 49 U.S.C. 1116(b). In addition, Congress has recognized the NTSB's process of issuing safety recommendations as one that has successfully prevented potential transportation accidents. See H.R. Rep. No. 103–239(I) at 1 (1993), which emphasizes the importance of the NTSB's safety recommendations and states that such recommendations "have saved countless human lives." In addition to performing these duties, the NTSB significantly influences transportation safety in conducting its aviation accident investigations. Often, organizations, such as state or local agencies; other Federal agencies; foreign governments; and private entities from the aviation industry, will implement changes during the course of an NTSB investigation to improve safety and prevent future accidents. Consequently, the NTSB is effective in improving safety in a variety of ways; the NTSB anticipates that the proposed notification requirement will assist the NTSB in improving safety via the NTSB's investigative process, safety recommendations, and identification of safety concerns.

For example, the NTSB investigated the April 25, 2006, crash of an unmanned aircraft system (UAS) that the United States Customs and Border Protection (CBP) agency was operating near Nogales, Arizona. The NTSB found that several factors related to pilot training and proficiency in dealing with emergency situations contributed to the accident. In addition to these findings, the NTSB identified several other safety

deficiencies regarding the UAS equipment design and maintenance, the CBP's operational contingency plans, and the safety risk management process used to ensure safety while operating the aircraft in the United States National Airspace System (NAS). The investigation also revealed a number of safety issues related to the FAA's air traffic management of the unmanned aircraft and the FAA's practice of monitoring unmanned aircraft operations under the current system of authorization. As a result of these findings, the CBP took action to improve certain aspects of its UAS equipment design and operation. Likewise, the FAA also took action to reconsider its current means of monitoring UAS operations in the NAS. Although these actions addressed some of the investigation's safety findings, the NTSB remained concerned about other potential safety deficiencies and the risk they presented for a possible midair collision between an unmanned aircraft and a human-piloted aircraft or a possible collision involving an unmanned aircraft and persons or property on the ground; the NTSB also remained concerned that these deficiencies may not be adequately addressed by current UAS operating procedures. As a result, the NTSB issued 22 safety recommendations to address the specific findings and concerns identified in the CBP accident investigation, as well as to improve the safety of other unmanned aircraft operations in the NAS. See Safety Recommendations A–07–065 through A–07–086, available at <http://www.nts.gov>.

In the course of conducting the CEP investigation, the NTSB also became aware that the framework of safety standards and regulations related to the design, operation, and continuing airworthiness of unmanned aircraft systems for use in the NAS is insufficient when compared to that of manned aircraft and that the development of these regulations and standards is a new and evolving area of civil aviation. Given this assessment, combined with the knowledge that numerous public use and civil entities are already currently operating their unmanned aircraft in the NAS today under specific approval from the FAA, the NTSB determined that it should receive notification of accidents involving unmanned aircraft. The NTSB anticipates that it will investigate these occurrences and make determinations and issue safety recommendations that other entities will use to develop safety improvements. Such a purpose is

consistent with Congress's intent in creating the NTSB and supplying the NTSB with its broad investigative authority. The NTSB also notes that the investigation of such occurrences will provide critical data and lessons learned that can assist regulators and industry in the development of safety regulations and standards and the monitoring of their effectiveness in improving the safety of unmanned aircraft operations in the NAS.

The NTSB has carefully considered the safety concerns that unmanned aircraft accidents could present. The NTSB notes that Congress's intention in creating the NTSB and providing it with broad authority with regard to investigating transportation accidents indicates a general purpose of preventing transportation accidents, because such accidents can cause death or physical harm. In recognizing this statutory purpose, the NTSB proposes to amend section 830.2 by including a definition of unmanned aircraft accidents, in accordance with the proposed language, below.

#### List of Subjects in 49 CFR Part 830

Aircraft accidents, Aircraft incidents, Aviation safety, Overdue aircraft notification and reporting, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the NTSB proposes to amend 49 CFR Part 830 as follows:

#### PART 830—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

1. The authority citation for 49 CFR part 830 is revised to read as follows:

**Authority:** Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101–1155); Federal Aviation Act of 1958, Pub. L. No. 85–726, 72 Stat. 731 (codified as amended at 49 U.S.C. 40101).

2. Amend § 830.2 as follows:

A. Add a new sentence at the end of the definition of “Aircraft accident” to read as set forth below; and

B. Add a definition of “Unmanned aircraft accident” in alphabetical order to read as follows:

#### § 830.2 Definitions.

\* \* \* \* \*

*Aircraft accident* \* \* \* For purposes of this part, the definition of “aircraft accident” includes “unmanned aircraft accident,” as defined herein.

\* \* \* \* \*

*Unmanned aircraft accident* means an occurrence associated with the operation of a public or civil unmanned aircraft that takes place between the time that the aircraft is activated with the purpose of flight and the time that the aircraft is deactivated at the conclusion of its mission, in which any person suffers death or serious injury, or in which the aircraft receives substantial damage.

Dated: March 24, 2008.

**Vicky D'Onofrio,**

*Federal Register Liaison Officer.*

[FR Doc. E8–6393 Filed 3–28–08; 8:45 am]

**BILLING CODE 7533–01–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

**RIN 0648–AV34**

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 30A

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

**ACTION:** Notice of availability of Amendment 30A to the Reef Fish Fishery Management Plan; request for comments.

**SUMMARY:** NMFS announces the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 30A to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico for review, approval, and implementation by NMFS. Amendment 30A proposes actions to end overfishing of greater amberjack and gray triggerfish and to rebuild these stocks to sustainable levels.

**DATES:** Written comments must be received no later than 5 p.m., eastern time, on May 30, 2008.

**ADDRESSES:** You may submit comments, identified by “0648–AV34” by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>.

- Fax: 727–824–5308; Attention: Peter Hood.

- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will

generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 30A, which include a supplemental environmental impact statement, an initial regulatory flexibility analysis, and a regulatory impact review may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1711; e-mail [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org); or may be downloaded from the Council's website at <http://www.gulfcouncil.org/>.

#### FOR FURTHER INFORMATION CONTACT:

Peter Hood, telephone 727–824–5305; fax 727–824–5308; e-mail [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

#### Background

The reauthorized Magnuson-Stevens Act of 2006 requires regional fishery management councils to establish annual catch limits (ACLs) for each stock or stock complex and accountability measures (AMs) to ensure these ACLs are not exceeded. Amendment 30A addresses these requirements for greater amberjack and gray triggerfish.

Greater amberjack have been under a rebuilding plan since 2003. However, a new stock assessment completed in 2006 concluded that the stock is not recovering as projected. It remains overfished and NMFS recently determined overfishing is recurring. Amendment 30A is necessary to end overfishing and adjust total allowable catch (TAC) and management measures to bring the greater amberjack rebuilding