make a final attainment determination for the Birmingham area (CAA section 181(6)) by May 15, 1994. The Court required EPA to make a formal determination within 120 days from the date of its opinion. *Sierra Club* v. *Whitman,* No. 00–2206 (D.D.C. July 10, 2002). In compliance with the Court's order, EPA proposes to determine that the Birmingham area had attained the 1-hour ozone standard by November 15, 1993.

IV. Proposed Action

Pursuant to section 181(b)(2)(A) of the CAA, EPA is proposing to determine that the Birmingham area attained the 1-hour NAAQS for ozone by November 15, 1993. This determination is based upon the area's design value as of its attainment date, and upon three years of complete, quality-assured, ambient air monitoring data for the years 1991–1993 which indicate that Birmingham area attained the 1-hour ozone NAAQS.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed determination of attainment does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 9, 2002.

J. I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–21286 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 080702E]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs in response to an application submitted by the Groundfish Group Associated Fisheries of Maine (Associated Fisheries of Maine), in collaboration with Manomet Center for Conservation Sciences (Manomet). These EFPs would allow up to 12 vessels to fish for yellowtail flounder in NE multispecies year-round Closed Area II (CA II) during the months of August through December, 2002, and July, 2003, with the potential of the August trips occurring in 2003 depending on when the EFPs are issued.

The purpose of the study is to collect observer-based data to determine whether seasonal access to portions of CA II for the purpose of harvesting Georges Bank (GB) yellowtail flounder is possible without significant bycatch and discard of other regulated NE multispecies, particularly Atlantic cod and haddock. This information could then be used by the New England Fishery Management Council (Council) and NMFS to determine the feasibility of establishing a seasonal access program that would allow the harvest of GB yellowtail flounder in portions of CA II.

DATES: Comments on this action must be received at the appropriate address or

fax number (see **ADDRESSES**) on or before September 5, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Yellowtail EFP Proposal.'' Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Environmental Assessment (EA) are available from the NE Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, (978) 281–9103, email *allison.ferreira@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

Three year-round closed areas were established in 1994 under Amendment 5 to the FMP to provide protection to concentrations of regulated NE multispecies, particularly Atlantic cod, haddock, and yellowtail flounder. These closure areas, Closed Area I, Closed Area II and the Nantucket Lightship Closure Area, have proven to be effective in improving the stock status of several species, in particular, the status of GB yellowtail flounder. Spawning stock biomass (SSB) for GB yellowtail flounder increased from 2,600 mt in 1992 to 33,500 mt in 1999. Mean stock biomass also increased from 4,500 mt in 1992 to 49,600 mt in 1999. In 2001, the Transboundary Resources Assessment Committee's (TRAC) Advisory Report on Stock Status estimated GB yellowtail flounder SSB to be between 37,000 and 50,500 mt (80–percent probability) and the mean biomass to be between 48,000 and 66,500 mt (80–percent probability). Furthermore, in 2001, the Multispecies Monitoring Committee (MMC) estimated the mean biomass for GB yellowtail flounder to be 55,437 mt, which is well above the biomass target (B_{target}) of 49,000 mt. In addition, the MMC estimated the 2001 fishing mortality rate (F) for GB yellowtail flounder to be F_{2001}=0.14, which is well below the target F of $F_{0.1}$=0.25.

In their EFP application, Manomet and the Associated Fisheries of Maine state that common knowledge within the fishing and scientific communities suggests that Atlantic cod and haddock are less available in certain portions of CA II during specific seasons. The applicants feel that there is a need to support this knowledge with scientific data, potentially enabling the rebuilt GB yellowtail flounder resource to be utilized without impacting the management programs that currently protect the rebuilding stocks of cod and haddock on Georges Bank.

Proposed EFP

The Associated Fisheries of Maine, in collaboration with Manomet, have submitted an application for 17 EFPs (12 vessels and 5 alternates) that would exempt these vessels from the days-at-sea (DAS) requirements specified under 50 CFR 648.80 and 648.82, and CA II restrictions specified under § 648.81. The proposed study would occur in the area south of 41°30′ N. lat. within CA II. The experiment would consist of two vessels conducting one concurrent 5–day trip each month for the months of August through December, 2002 and July, 2003, for a total of 6 concurrent trips and 12 total vessel trips for the study. Each trip would consist of 2 transiting days and 3 sampling days, for a total of 24 vessel transiting days and 36 vessel sampling days over the course of the study. Participating vessels would be prohibited from fishing in areas outside of CA II during an experimental fishing trip. In order to offset the cost of the experiment, the applicant has requested that the participating vessels be exempt from DAS requirements while participating in the proposed experimental fishery.

Survey operations would follow a pre-determined sampling design. The sample area would be divided into grids of approximately 6 square miles (15.5 sq. km) During each trip, hauls would be conducted in each grid, with each haul lasting 20 minutes. The sampling design would enable comparison trawls between vessels in order to standardize catch data between vessels. A total of 51 hauls, 26 hauls for vessel 1 and 25 hauls for vessel 2, would be conducted during each trip. Vessels would utilize standard otter trawl gear having a codend mesh size of 6.5–inch (16.5 cm) square mesh, the minimum mesh size for the GB Regulated Mesh Area.

A total allowable catch (TAC) of GB yellowtail flounder of 220 mt would be established for the experimental fishery. This equates to approximately 40,000 lb (18,144 kg) of yellowtail flounder per vessel, per trip. Incidental catch of cod and haddock would be limited to 2,000 lb (907 kg) and 3,000 lb (1,361 kg) per DAS, respectively. In addition, all fish landed would have to meet minimum size requirements.

Several species of skates are found in the southern portion of CA II where the proposed experimental fishery would be conducted. Due to concerns over skate bycatch, particularly the bycatch of thorny and barndoor skate, the applicants have agreed to identify and record all skates caught and return all skates caught to the sea immediately in order to minimize mortality. No skates would be retained for landing or sale. In addition, the applicants have stated that the bycatch of skates would be avoided to the extent practicable.

A minimum of two observers, consisting of Manomet scientific staff, would be present on board each participating vessel, equating to 100–percent observer coverage for this experimental fishery. All catch would be sorted, weighed and recorded by species. In addition, commercially important species, including all skate species, would be individually weighed and measured. Observers would be responsible for collecting all biological and environmental data on NMFS observer forms. Interim reports would be provided to NMFS at the end of each trip outlining total catch, including bycatch and discards. Participating vessels may also be required to report estimates of daily catch to NMFS via a call-in system in order to monitor the GB yellowtail TAC of 220 mt requested for this experimental fishery.

The EFPs would contain a provision that the Regional Administrator has the authority to reconsider the continuation of the proposed experimental fishery on a month-by-month basis. The Regional Administrator would be authorized to terminate the experimental fishery if the yellowtail flounder TAC of 220 mt is exceeded or if excessive bycatch of cod, haddock and other species of concern (including, but not limited to, skate) occurs during any given trip.

A draft EA has been prepared that analyzes the impacts of the proposed experimental fishery on the human environment. This draft EA concludes that the proposed activities to be conducted under the requested EFPs are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The draft EA also concludes that the proposed experimental fishery would not be detrimental to Essential Fish Habitat, marine mammals, or protected species.

EFPs would be issued to up to 17 vessels exempting them from the DAS requirements and CA II restrictions of the FMP.

Based on the results of the proposed experimental fishery, this action may lead to future rulemaking.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested

parties the opportunity to comment on applications for proposed EFPs.

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

Dated: August 14, 2002.

Virginia M. Fay,

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

[FR Doc. 02–21316 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–22–S