

insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self-insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 13132, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, and section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

7. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

8. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

- a. *Mail:* Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NVS-131, NHTSA, 400 Seventh Street, SW., Washington, DC 20590;
- b. *E-mail:* cballard@nhtsa.dot.gov; or
- c. *Fax:* (202) 493-2290.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

- In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

PART 544—[AMENDED]

- 1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

- 2. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (*e.g.*, the report due before October 25, 2004 will contain the required information for the 2001 calendar year).

* * * * *

- 3. Appendix A to Part 544 is revised to read as follows:

Appendix A to Part 544—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
 American Family Insurance Group
 American International Group
 California State Auto Association
 CGU Group
 CNA Insurance Companies
 Erie Insurance Group
 Berkshire Hathaway/GEICO Corporation Group
 Great American P & C Group
 Hartford Insurance Group
 Liberty Mutual Insurance Companies
 Metropolitan Life Auto & Home Group
 Nationwide Group
 Progressive Group
 SAFECO Insurance Companies
 State Farm Group
 Travelers/Citigroup Company
 USAA Group
 Farmers Insurance Group

- 4. Appendix C to Part 544 is revised to read as follows:

Appendix C to Part 544—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
 ANC Rental Corporation¹
 ARI (Automotive Resources International)
 Avis, Rent-A-Car, Inc.
 Budget Rent-A-Car Corporation
 Dollar Rent-A-Car Systems, Inc.
 Donlen Corporation
 Enterprise Rent-A-Car
 GE Capital Fleet Services
 Hertz Rent-A-Car Division (subsidiary of the Hertz Corporation)
 Lease Plan USA, Inc.
 National Car Rental System, Inc.
 PHH Vehicle Management Services
 Ryder TRS
 Thrifty Rental Car System Inc.
 U-Haul International, Inc. (Subsidiary of AMERCO)
 Wheels Inc.

¹ Indicates a newly listed company, which must file a report beginning with the report due October 25, 2004.

Issued on: July 6, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04-15765 Filed 7-12-04; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 021017237-4194-02; I.D. 090302F]

RIN 0648-AQ51

Access to Tissue Specimen Samples from the National Marine Mammal Tissue Bank

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

ACTION: Final rule.

SUMMARY: NMFS is issuing a final rule that provides the criteria and procedures necessary to access tissue samples archived in the National Marine Mammal Tissue Bank (NMMTB). These samples are available to the scientific community, contributors, and principal investigators for research that is consistent with the goals of the NMMTB and the Marine Mammal Health and Stranding Response Program (MMHSRP).

DATES: This final rule is effective August 12, 2004.

ADDRESSES: Copies of the MMHSRP and the NMMTB Specimen Access Protocol can be obtained by writing to Dr. Teri Rowles, Marine Mammal Health and Stranding Response Program, MMHSRP, 1315 East West Highway, Silver Spring, MD 20910 and can also be obtained from the MMHSRP Web site listed under the electronic Access portion of this document.

FOR FURTHER INFORMATION CONTACT: Dr. Teri Rowles, Marine Mammal Health and Stranding Response Program, 301-713-2322 ext 178.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the MMHSRP and the NMMTB Specimen Access Policy can be downloaded from the Health and Stranding Response Program web site at http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding/Response_Program/mmhsrp.html

Background

On November 12, 2002, NMFS proposed a protocol for access to tissue specimen samples from the NMMTB (67 FR 68553). The proposed rule provided background information on the availability of tissue specimen samples from the NMMTB, which is summarized here. The NMMTB provides protocols, techniques, and physical facilities for the long-term storage of tissues from marine mammals. Scientists can request tissues from this repository for retrospective analyses to determine environmental trends of contaminants and other analytes of interest. The NMMTB is currently managed in collaboration with the National Institute of Standards and Technology (NIST) and is housed at the Hollings Marine Laboratory in Charleston, SC and the NIST campus in Gaithersburg, MD as part of the National Biomonitoring Specimen Bank. The NMMTB collects, processes, and stores tissues or blood from specific species; animals from mass strandings; animals that have been trapped, injured or killed incidental to commercial fisheries; animals taken for subsistence purposes; animals from which biopsies have been obtained; and animals from unusual mortality events.

Each tissue specimen consists of duplicate samples (denoted A and B) of approximately 150 g. each. When a portion of a tissue specimen is requested for analysis, the "B" sample of that specimen can be cryogenically homogenized and aliquoted into approximately 20 subsamples of 6 to 8 g. each. Fifty percent of each specimen is available for research and scientific

evaluations consistent with the goals of the NMMTB and 50 percent is intended for long-term storage as a more permanent archive for decades.

Each "B" sample of a specimen is divided into three categories. Category 1, which is 10 percent of the homogenized material, is reserved for baseline analyses. Category 2 consists of 50 percent of the material and is reserved for use by specimen contributors. Category 3 constitutes 40 percent of the material and is available to the scientific community for research that is consistent with the goal of the NMMTB and the MMHSRP.

If an "A" sample is eventually homogenized, it is divided into the following four categories. Category 1 consists of 10 percent of the material for baseline analyses. Category 2 consists of 25 percent of the material reserved for use by the specimen contributors. Category 3 consists of 25 percent of the material available to the scientific community. Category 4 contains the remaining 40 percent, which is intended as a permanent archive. Category 4 will not be used unless a very high need can be identified by NOAA and the Department of the Interior. Combining the "A" and "B" samples, the specimen allocations for each use are as follows: Category 1 = 10 percent, Category 2 = 37.5 percent, Category 3 = 32.5 percent, and Category 4 = 20 percent.

Comments and Responses and Changes from the Proposed Rule

NMFS received comments from a variety of sources, including representatives of interest groups, state and Federal agencies, universities, and private citizens. Comments duplicated others; therefore, individual comments were combined and addressed together below. Report specific comments were considered and were incorporated, as appropriate. There was also a comment received via NMFS' E-comment website.

Comment 1: Four commenters requested that the contributors be included in the review process.

Response: The MMHSRP Program Manager will send the request and attached study plan to any contributor(s) of the tissue specimen sample. The contributor(s) of the sample may submit comments on the proposed research activity to the Director, Office of Protected Resources within 30 days of the date that the request was sent to the contributor(s).

Comment 2: All analysis should be reported and made available to the contributor(s).

Response: The research/findings based on use of the banked tissue will

be reported to the NMMTB, MMHSRP Program Manager, and the contributor.

Comment 3: Credit and acknowledgment should include the original collector.

Response: Applications will be required to include agreement that credit and acknowledgment will be given to U.S. Fish and Wildlife Service, U.S. Geologic Service, NMFS, National Institute of Standards and Technology, Minerals Management Service (MMS), the NMMTB, and the collector for use of banked tissue.

Comment 4: Credit and acknowledgment should include the Minerals Management Service.

Response: This was incorporated into the protocol (see response to comment #3).

Comment 5: Tissue specimen samples used for DNA sequencing should be required to archive sequences in the national Center for Biotechnology Information's GenBank. Sequence accessions in GenBank should document the source, citing a NIST catalog number that individually identifies the animal.

Response: This was incorporated into the protocol.

Comment 6: Tissue specimen samples should be destroyed after research so subsequent research that was not reviewed or approved can not be conducted.

Response: The applicant will dispose of the tissue specimen sample after the research is completed unless the requester puts in another request for research and receives approval. The timeline for this request is three months after the original project has been completed.

Comment 7: The second paragraph of the Background section was misleading when discussing sample "A" and "B".

Response: This paragraph was clarified so that it was not misleading.

Comment 8: MMS must be designated as having first priority and right of first refusal for access to Alaska Marine Mammal Tissue Archival Project (AMMTAP).

Response: MMS will not have first priority and right of first refusal to AMMTAP tissues. MMS will have the same access to tissue specimen samples as all other federal agencies that are major partners.

Comment 9: The second paragraph of the back ground section is misleading in that it implies that 50% of the sample "B" is available to the scientific community for research purposes and 50% of the specimen "A" is not available. Both "A" and "B" samples are actually divided into categories of various uses. These categories for "B"

sample are: 10% for use by the NMMTB for baseline analysis as part of its quality assurance procedures, 60% for use by Federal and non-Federal Contributors of specimens to the NMMTB, and 40% for use by the scientific community (non-contributing). The "A" sample is divided into 10% for baseline analysis, 25% for Contributors, 25% for scientific community, and 40% for long-term archive.

Response: There is no change, the percentage will stay the same.

Comment 10: It must be clear in the description on "How to Apply," that the procedures described are for the scientific community (non-contributors).

Response: A copy of the applicant's scientific research permit is requested in the "How to Apply" section. This will clarify that the tissue specimen sample will be used for scientific research.

Comment 11: More streamlined access procedures should be in place for contributors, otherwise many important partners may be lost to the NMMTB and to the MMHSRP.

Response: Contributors need to send a proposal for tissue samples to the review committee. This level of review is needed to ensure that the samples are being used properly.

Comment 12: The e-comment computer program used to send in comments was difficult, cumbersome and user-unfriendly.

Response: The proposed rule was one of the first rules being used for the e-comments program and these problems have been subsequently corrected.

Under 16 U.S.C. 1421f, section 407(d)(1) of the Marine Mammal Protection Act (MMPA), NMFS must establish criteria for access to marine mammal tissues in the NMMTB and make those criteria available for public review and comment, which NMFS made available in the proposed rule. In addition, pursuant to MMPA section 407(d) NMFS must establish criteria for access to tissue analyses conducted pursuant to MMPA section 407(b) and data in the central marine mammal data base maintained under MMPA section 407(c). NMFS will establish these additional criteria in subsequent rulemaking.

The criteria require that applicants for tissue specimen samples from the NMMTB demonstrate that their research will fulfill the goals of the NMMTB and MMHSRP and that comparable tissue samples to accomplish the goals of the proposed research could not be readily obtained from other sources. The goal of the National Marine Mammal Tissue Bank (NMMTB) is to maintain quality

controlled marine mammal tissues and or blood that will permit retrospective analyses to determine such things as environmental trends of contaminants and other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques. The goals of the MMHSRP are to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events.

How To Apply

1. Applicants must submit a signed written request with attached study plan to the MMHSRP Program Manager, Office of Protected Resources, NMFS (see **ADDRESSES**).

2. The following specific information must be included in the request:

a. A clear and concise statement of the proposed use of the banked tissue specimen sample. The applicant must demonstrate that the proposed use of the banked tissue is consistent with the goals of the NMMTB and the MMHSRP (described above);

b. A copy of the applicant's scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit;

c. Name of principal investigator, official title, and affiliated research or academic organization;

d. Specific tissue sample and quantity desired;

e. Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance (AQA) program, which was designed to ensure the accuracy, precision, level of detection, and intercompatibility of data resulting from chemical analyses of marine mammal tissues. The AQA consists of annual interlaboratory comparisons and the development of control materials and standard reference materials for marine mammal tissues. Standard Reference Materials for use in the analysis of marine mammal tissues can be purchased from the NIST;

f. Verification that funding is available to conduct the research;

g. Estimated date for completion of research, and schedule/date of subsequent reports;

h. Agreement that all (1)research/ findings based on use of the banked tissue will be reported to the NMMTB,

MMHSRP Program Manager, and the contributor; and (2) the sequences of any tissue specimen samples that are used/released for genetic analyses (DNA sequencing) will be archived in the National Center for Biotechnology Information's GenBank. Sequence accessions in GenBank should document the source, citing a NIST field number that identifies the animal; and

i. Agreement that credit and acknowledgment will be given to U.S. Fish and Wildlife Service (USFWS), U.S. Geologic Service (USGS), NMFS, NIST, MMS, the NMMTB, and the collector for use of banked tissues. The applicant shall insert the following acknowledgment in all publications, abstracts or presentations based on research using the banked tissue:

The specimens used in this study were collected by [the contributor] and provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of USGS, USFWS, MMS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

3. Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

a. Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species, and

b. Representatives of the NMMTB Collaborating Agencies (NMFS, USFWS, USGS Biological Resources Division, and NIST).

If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which may be outside of NMFS or USFWS but within the Federal government.

4. The MMHSRP Program Manager will send the request and attached study plan to any contributor(s) of the tissue specimen sample. The contributor(s) of the sample may submit comments on the proposed research activity to the Director, Office of Protected Resources within 30 days of the date that the request was sent to the contributor(s).

5. The USFWS Representative of the NMMTB Collaborating Agencies will be chair of the review committees for requests involving species managed by the DOI. The MMHSRP Program Manager will be chair of all other review committees.

6. Each committee chair will provide recommendations on the request and an evaluation of the study plan will be provided by each committee chair to the Director, Office of Protected Resources, NMFS.

7. The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee, comments received from any contributor(s) of the sample within the time provided in paragraph 4, and determination that the proposed use of the banked tissue specimen sample is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members. If the samples are released, the response will indicate whether the samples have been homogenized and, if not, the homogenization schedule.

The average time for review of the request and the mailing of the written response to the requester will be 45 working days from receipt of the request by the committee chair. However, the Director, Office of Protected Resources, NMFS should respond in writing no later than 60 days following receipt of the letter of request.

8. Shipping and homogenization costs related to the use of any specimens from the NMMTB will be borne by the applicant.

9. The applicant will dispose of the tissue specimen sample after the research is completed unless the requester submits another request (within 3 months after the project is complete) and receives approval in accordance with the procedures listed above.

Classification

This final rule contains collection-of-information requirements and, therefore, is subject to the provisions of the Paperwork Reduction Act (PRA). Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Applicants will be submitting a written request with attached study plan to the MMHSRP to apply for a tissue specimen sample from the NMMTB. Applicants will also report all research/findings based on use of the banked tissue to the NMMTB, MMHSRP Program Manager, and the contributor.

Notwithstanding any other provision of the law, no person is required to

respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. The OMB approval number for this PRA package is OMB 0648 0468.

This action will not have an adverse effect on marine mammals under the Marine Mammal Protection Act.

This final rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

This final rule has been determined not to be significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action, would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding the economic impact of this rule. A final regulatory flexibility analysis is not required, and none was prepared.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Confidential business information, Fisheries and Marine mammals, Reporting and record keeping requirements.

Dated: July 7, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Section 216.47 is added to read as follows:

§ 216.47 Access to marine mammal tissue, analyses, and data.

(a) *Applications for the National Marine Mammal Tissue Bank samples (NMMTB).* (1) A principal investigator, contributor or holder of a scientific research permit issued in accordance with the provisions of this subpart may apply for access to a tissue specimen sample in the NMMTB. Applicants for tissue specimen samples from the NMMTB must submit a signed written

request with attached study plan to the Marine Mammal Health and Stranding Response Program (MMHSRP) Program Manager, Office of Protected Resources, NMFS. The written request must include:

(i) A clear and concise statement of the proposed use of the banked tissue specimen. The applicant must demonstrate that the proposed use of the banked tissue is consistent with the goals of the NMMTB and the MMHSRP.

(A) The goals of the MMHSRP are to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events.

(B) The goal of the NMMTB is to maintain quality controlled marine mammal tissues that will permit retrospective analyses to determine environmental trends of contaminants and other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques.

(ii) A copy of the applicant's scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit;

(iii) Name of principal investigator, official title, and affiliated research or academic organization;

(iv) Specific tissue sample and quantity desired;

(v) Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance (AQA) program, which was designed to ensure the accuracy, precision, level of detection, and intercompatibility of data resulting from chemical analyses of marine mammal tissues. The AQA consists of annual interlaboratory comparisons and the development of control materials and standard reference materials for marine mammal tissues;

(vi) Verification that funding is available to conduct the research;

(vii) Estimated date for completion of research, and schedule/date of subsequent reports;

(viii) Agreement that all research findings based on use of the banked tissue will be reported to the NMMTB, MMHSRP Program Manager and the contributor; and the sequences of tissue specimen samples that are used/ released for genetic analyses (DNA

sequencing) will be archived in the National Center for biotechnology Information's GenBank. Sequence accessions in GenBank should document the source, citing a NIST field number that identifies the animal; and

(ix) Agreement that credit and acknowledgment will be given to U.S. Fish and Wildlife Service (USFWS), US Geologic Service (USGS), National Institute of Standards and Technology (NIST), the Minerals Management Service (MMS), NMFS, the NMMTB, and the collector for use of banked tissues.

(2) The applicant shall insert the following acknowledgment in all publications, abstracts, or presentations based on research using the banked tissue:

The specimens used in this study were collected by [the contributor] and provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of MMS, USGS, USFWS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

(3) Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

(i) Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species; and

(ii) Representatives of the NMMTB Collaborating Agencies (NMFS, USFS, USGS Biological Resources Division, and NIST) If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which may be outside of NMFS or USFWS but within the Federal Government.

(4) The MMHSRP Program Manager will send the request and attached study plan to any contributor(s) of the tissue specimen sample. The contributor(s) of the sample may submit comments on the proposed research activity to the Director, Office of Protected Resources within 30 days of the date that the request was sent to the contributor(s).

(5) The USFWS Representative of the NMMTB Collaborating Agencies will be chair of review committees for requests involving species managed by the DOI. The MMHSRP Program Manager will be chair of all other review committees.

(6) Each committee chair will provide recommendations on the request and an evaluation of the study plan to the

Director, Office of Protected Resources, NMFS.

(7) The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee, comments received from any contributor(s) of the sample within the time provided in paragraph (a)(4) of this section, and determination that the proposed use of the banked tissue specimen is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members. If the samples are released, the response will indicate whether the samples have been homogenized and, if not, the homogenization schedule.

(8) The applicant will bear all shipping and homogenization costs related to use of any specimens from the NMMTB.

(9) The applicant will dispose of the tissue specimen sample consistent with the provisions of the applicant's scientific research permit after the research is completed, unless the requester submits another request and receives approval pursuant to this section. The request must be submitted within three months after the original project has been completed.

(b) [Reserved]

[FR Doc. 04-15825 Filed 7-12-04; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040326103-4198-02; I.D. 031504A]

RIN 0648-AQ82

Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2004

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement recreational measures for the 2004 summer flounder, scup, and black sea bass fisheries. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Effective July 13, 2004.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Final Regulatory Flexibility Analysis (FRFA) are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov/ro/doc/com.htm>.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational measures. The recreational harvest limits for summer flounder, scup, and black sea bass fisheries were published as part of the 2004 specifications on January 14, 2004 (69 FR 2074). The 2004 coastwide recreational harvest limits are 11.21 million lb (5,085 mt) for summer flounder, 3.99 million lb (1,810 mt) for scup, and 4.01 million lb (1,819 mt) for black sea bass. The 2004 quota specifications, inclusive of the recreational harvest limits, were determined to be consistent with the 2004 target fishing mortality rate (F) for summer flounder and the target exploitation rates for scup and black sea bass.

The proposed rule to implement annual Federal recreational measures for the 2004 summer flounder, scup, and black sea bass fisheries was published on April 14, 2004 (69 FR 19805), and contained management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. A complete discussion of the development of the recreational measures appeared in the preamble of the proposed rule and is not repeated here.

Table 1 contains the coastwide Federal measures for scup and black sea bass that are being implemented. As described below, NMFS has added one day (September 7) to the open season for