

except only each lead unit of combined and multiple units (tugs and tows).

(b) Each vessel listed in paragraph (a) of this section must meet the following requirements to transit the Seaway:

(1) International Maritime Organization (IMO) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne AIS, as amended;

(2) International Telecommunication Union, ITU-R Recommendation M.1371-1: 2000, Technical Characteristics For A Universal Shipborne AIS Using Time Division Multiple Access In The VHF Maritime Mobile Band, as amended;

(3) International Electrotechnical Commission, IEC 61993-2 Ed.1, Maritime Navigation and Radio Communication Equipment and Systems—AIS—Part 2: Class A Shipborne Equipment of the Universal AIS—Operational and Performance Requirements, Methods of Test and Required Test Results, as amended;

(4) International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 2 April 2002, as amended, and, for ocean vessels only, with a pilot plug, as specified in Section 3.2 of those Guidelines, installed close to the primary conning position in the navigation bridge and a standard 120 Volt, AC, 3-prong power receptacle accessible for the pilot's laptop computer; and

(5) Computation of AIS position reports using differential GPS corrections from the U.S. and Canadian Coast Guards' maritime Differential Global Positioning System radiobeacon services; or

(6) The use of portable AIS is permissible.

Issued at Washington, DC, on November 22, 2002.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 52

RIN 1024-AC85

Commercial Use Authorizations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish National Park Service (NPS) regulations concerning the issuance and administration of commercial use authorizations. Commercial use authorizations are a form of NPS written authorization under which persons are allowed to provide certain commercial services to visitors of areas of the national park system. The issuance of commercial use authorizations is authorized by Section 418 of the National Parks Omnibus Management Act of 1998, Public Law 105-391. The proposed commercial use authorization program will replace the current NPS "incidental business permit" program when adopted.

DATES: Written comments on the rulemaking must be received on or before January 27, 2003. Written comments on the information collection must be received by Office of Management and Budget on or before December 27, 2002.

ADDRESSES: Written comments for the rulemaking should be sent to Cynthia Orlando, Concessions Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. Fax: (202) 371-2090. Email: WASO_Regulations@nps.gov. Written comments for the information collection should be sent to Attention Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington DC 20503.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. Fax: (202) 371-2090.

SUPPLEMENTARY INFORMATION:

Background

Section 418 of the National Parks Omnibus Management Act of 1998, Public Law 105-391 authorizes NPS to issue commercial use authorizations to persons to provide commercial services to visitors of areas of the national park system. There are two types of commercial use authorizations, incidental activity commercial use authorizations and in-park commercial use authorizations. The types of commercial activities that may be authorized under commercial use authorizations are similar in many respects to the type of activities that are authorized by concession contracts issued under 36 CFR part 51, as amended. Generally, however, commercial use authorizations, unlike concession contracts, do not authorize the construction of improvements in a park area by a holder, and, except in

limited circumstances, require that the services provided by the holder begin and end outside of a park area. The proposed regulations when finalized will assure that all NPS commercial use authorizations are issued or solicited and awarded consistently and that the private sector will be aware of NPS authorizing procedures. The proposed commercial use authorization program will replace the current NPS "incidental business permit" program when adopted.

Section 52.1 Authority and Purposes generally describes the authorities for and purposes of the proposed rule. The basic authority is 16 U.S.C. 1 *et seq.*, the National Park Service Organic Act. This is supplemented by section 418 of the National Parks Omnibus Management Act of 1998, 16 U.S.C. 5966.

Commercial use authorizations may authorize commercial services in park areas that are similar to or the same as some types of services authorized by concession contracts issued by the Director under 36 CFR Part 51.

Concession contracts may be issued to authorize the provision of services to visitors rather than a commercial use authorization even though the proposed services may be suitable to authorization under a commercial use authorization. The Director may only issue commercial use authorizations under the terms and conditions of this part.

Drafting Information

The primary authors of this rule are the members of a team of NPS officials that manage commercial activities in units of the National Park System.

Compliance with Other Laws

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget makes the final determination as to the significance of this regulatory action and it has determined that this document is a significant rule and is subject to review.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act as it is not required to be published for comment before adoption by 5 U.S.C. 553 or other law. (5 U.S.C. 553 does not apply to regulations regarding contracts or public lands.) NPS is soliciting public comment on this proposed rule as a matter of policy.

However, NPS considers that, even if the proposed regulations were subject to the Regulatory Flexibility Act, they would not have a significant effect on a substantial number of small businesses within the meaning of the Act. This is because the proposed regulations generally only codify, in response to Section 418 of Public Law 105-391, NPS's current requirements regarding incidental business permits. After the proposed regulations are finalized, incidental business permits will be replaced by commercial use authorizations with no anticipated significant changes to the program as currently implemented. In addition, although the large majority of the some 4,000 businesses now holding incidental business permits are "small businesses" within the meaning of the Regulatory Flexibility Act, these businesses (firewood sales, trail guiding, tow truck operators, etc.) represent only a minuscule fraction of the total number of such businesses operating in the United States. In this connection, NPS also notes that the proposed regulations do not in fact "regulate" small businesses in the usual sense of the word. This is because no business is subject to the proposed regulations unless its owner seeks to conduct commercial activities on federal land. The regulations have no applicability to the activities of any business that is not conducted on federal lands.

Small Business Regulatory Enforcement Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Fairness Enforcement Act. This rule does not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual entities, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary effect of the proposed rule is to

establish policies and procedures for the issuance of commercial use authorizations for areas of the National Park System.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12360, this rule does not have significant takings implications as this rule does not apply to private property. A takings assessment is not required.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no requirements on any governmental entity other than NPS.

Civil Justice Reform (Executive Order 12998)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. An OMB form 83-I has been reviewed by the Department and sent to the Office of Management and Budget (OMB) for approval. OMB has up to 60 days to approve or disapprove this information collection but may respond after 30 days. Therefore, in order to assure maximum consideration, written comments, suggestions or objections should be submitted on or before December 27, 2002 to Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. Also, provide a copy of any written comments on this information collection submitted to OMB by mail to: Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. E-mail: Cindy_Orlando@nps.gov.

The information collection contained in this proposed regulation is entitled

Commercial Use Authorization, Issuance and Reporting Requirements. This collection is based on the requirement for persons interested in conducting business within national parks to provide information regarding their business (documented in the CUA form submitted for approval), provide a non-refundable application fee when filing, and annually report gross receipts from business conducted within national parks. The initial request and the CUA form allows the holder to apply for and conduct business in national parks and the NPS to retain a written record of the holder's business information. The application fee is used to recover the administrative costs associated with issuing the CUA permit. The reporting requirement enables the NPS to verify that the holder has received less than \$25,000 in gross receipts for business conducted within national parks and determines eligibility for the CUA.

The NPS expects to receive/award about 3,500 applicants annually. Holders will be required to report gross receipts once a year to the NPS. We expect the annual hours burden to the public to be 14,000 hours—3,500 hours for the initial request, 3,500 hours for the application and 7,000 hours for the reporting requirement. Additionally, we expect to have an annual monetary burden of \$525,000 resulting from the application fee [$\$150 \times 3,500$ applicants]. The application fee total burden is based on an average fee of \$150 per applicant (from a range of \$50–\$250 per application) and 3,500 applicants.

Regarding this information collection, the NPS specifically requests comments on whether the collection of information is necessary or the proper for the performance of the functions of the bureau, including whether the information will have practical utility; the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; the quality, utility, and clarity of the information to be collected; and how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

National Environmental Policy Act

This rule does not constitute a major federal action affecting the quality of the human environment. A detailed statement under the National Environment Policy Act is not required. The rule will not increase public use of

park areas, introduce non-compatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects on the tribes.

Clarity of This Rule

Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity? (3) Does the format of the rule (groupings and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more but shorter sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? (6) What else could be done to make the rule easier to understand?

Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Public Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Cindy Orlando, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. You may also comment via the Internet to WASO_Regulations@nps.gov. Please also include "Attn: RIN 1024-AC85" in the subject line and your name and return address in your Internet message. You may fax your comments to (202) 371-2090. Finally, you may hand-

deliver comments to Cindy Orlando, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

List of Subjects in 36 CFR Part 52

Concessions, National parks, Small businesses.

Accordingly, we propose to add 36 CFR Part 52 to read as follows:

PART 52—COMMERCIAL USE AUTHORIZATIONS

Subpart A—Authority Purpose and Definitions

Sec.

- 52.1 What does this part cover?
- 52.2 Are commercial bus tour permits covered by this part?
- 52.3 How are certain terms defined in this part?

Subpart B—Issuance of Commercial Use Authorizations

- 52.4 What general conditions apply to the issuance of commercial use authorizations?
- 52.5 What are examples of an incidental activity commercial use authorization?
- 52.6 What are examples of an in-park commercial use authorization?
- 52.7 Is a non-profit organization required to obtain a commercial use authorization in order to provide services to visitors in a park area?
- 52.8 When must the Director limit the number of Special Park Use Permits to be issued to a park area?

Subpart C—Issuance of Commercial Use Authorizations

- 52.9 Who may be issued a commercial use authorization?
- 52.10 How does a person request the issuance of a commercial use authorization?
- 52.11 What happens after a written request for issuance of a commercial use authorization is made?
- 52.12 When must the Director limit the number of commercial use authorizations to be issued?
- 52.13 What happens if the Director determines to limit the number of

commercial use authorizations or Special Park Use Permits to be issued?

- 52.14 When will the Director establish visitor use limits.
- 52.15 What special responsibilities does the Director have if only a limited number of commercial use authorizations are issued or if the Director establishes visitor use limits?
- 52.16 What fees must the Director charge in connection with a commercial use authorization?
- 52.17 How will the Director expend fees received from holders?

Subpart D—Terms and Conditions of Commercial Use Authorizations

- 52.18 What is the term of a commercial use authorization?
- 52.19 May a commercial use authorization be transferred?
- 52.20 May a commercial use authorization provide an exclusive right to provide commercial services in a park area?
- 52.21 May a commercial use authorization permit the construction of structures, fixtures, or improvements on lands located within the boundaries of a park area?
- 52.22 May the Director terminate a commercial use authorization?
- 52.23 What reporting requirements must a commercial use authorization contain?
- 52.24 May incumbent holders obtain rights or a preference to the issuance of subsequent commercial use authorizations or to particular visitor use allocations?
- 52.25 What records must a holder maintain and what access does the Director have to these records?
- 52.26 What other terms and conditions may or must a commercial use authorization contain?

Authority: 16 U.S.C. 1 *et seq.*; Sec. 418, Pub. L. 105-391, 112 Stat. 3497 (16 U.S.C. 5966).

Subpart A—Authority, Purpose and Definitions

§ 52.1 What does this part cover?

This part covers the issuance and administration of commercial use authorizations. A commercial use authorization authorizes the holder to provide specific commercial services to visitors to a park area in certain circumstances and under specified terms and conditions. Commercial use authorizations may authorize commercial services in park areas that are similar to or the same as some types of services authorized by concession contracts issued by the Director under 36 CFR part 51. The Director at any time may choose to issue a concession contract in accordance with 36 CFR part 51 to authorize the conduct of commercial services even though the proposed services may be subject to authorization under a commercial use authorization. The Director may only

issue commercial use authorizations under the terms and conditions of this part. There are two types of commercial use authorizations, incidental activity commercial use authorizations and in-park commercial use authorizations.

§ 52.2 Are commercial bus tour permits covered by this part?

No. The Director administers commercial bus tour permits under separate regulations and guidelines.

§ 52.3 How are certain terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part.

Commercial bus tour means a type of commercial service provided to park area visitors where passengers are conveyed into and/or out of a park area by motor vehicle for a direct or indirect fee or charge and no other services (except for on-board interpretation) are provided.

Commercial bus tour permit means a form of written authorization issued for the conduct of commercial bus tours in park areas.

Commercial use authorization means a form of written authorization issued by the Director to a person. The authorization authorizes the holder to provide specific commercial services to park area visitors in certain circumstances and under specified terms and conditions. Except as otherwise indicated the term "commercial use authorization" as used in this part collectively refers to incidental activity commercial use authorizations and in-park commercial use authorizations.

Gross receipts means the total amount of revenue received by a holder, in cash, credit, or barter or any other form of compensation, from persons patronizing a holder's services.

Holder means a person to whom a commercial use authorization has been issued.

Incidental activity commercial use authorization means a commercial use authorization that authorizes the holder to provide specified commercial services to visitors to a park area when the services originate and terminate outside of park area boundaries.

In-park commercial use authorization means a commercial use authorization (issued only if projected annual gross receipts under the authorization are less than \$25,000) that authorizes the holder to provide specified commercial services to visitors of a park area that originate and are provided solely within the boundaries of a park area.

Non-profit organization means an entity that has been determined by the Internal Revenue Service to be exempt from federal income taxation as a non-profit or not-for-profit organization under the terms of the Internal Revenue Code.

Taxable income means income that is subject to federal income tax under the terms of the Internal Revenue Code.

Use limits means limits the Director may impose on a holder's access to park area lands or limits on a holder's park area entries and/visitor levels.

Visitor use allocations means allocations of a specified portion of a park area entrance, user days, or similar visitor use allowances that are required in order to implement park area visitor use limitations.

Subpart B—Issuance of Commercial Use Authorizations.

§ 52.4 What general conditions apply to the issuance of commercial use authorizations?

Both types of commercial use authorizations (incidental activity commercial use authorizations and in-park commercial use authorizations) may be issued only to authorize the provision of commercial services to park area visitors that the Director determines are appropriate to the applicable park area. In addition, a commercial use authorization may be issued only if the Director determines that the authorization and the services authorized by the authorization: (1) Will have minimal impact on the park area's resources and values; (2) are consistent with the purposes for which the park area was established; (3) are consistent with all applicable park area management plans, policies and regulations; and (4) meet all other requirements of this part. The Director must require that provision of services under a commercial use authorization are accomplished in a manner that is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the applicable park area.

§ 52.5 What are examples of an incidental activity commercial use authorization?

An incidental activity commercial use authorization authorizes the holder to enter a park area to provide commercial services to visitors if those services originate and terminate outside of the park area's boundaries. The authorization does not authorize solicitation of customers, sales, payment or other direct commercial activity within a park area. An example of the type of services authorized by an incidental activity commercial use

authorization is a guided horseback trail ride operation based outside of a park area that guides visitors into and out of a park area on a trail ride. In this example, all solicitation of customers, sales, and payment for the services must occur outside of park area boundaries. Incidental activity commercial use authorizations must contain appropriate provisions limiting the conduct of services by the holder in a manner consistent with the limitations set forth in this part. The Director may issue a single incidental activity commercial use authorization allowing commercial services to visitors in more than one area of the park if all other applicable requirements of this part are met.

§ 52.6 What are examples of an in-park commercial use authorization?

An in-park commercial use authorization authorizes the holder to provide specified commercial services to visitors (issued only if projected gross receipts under the authorization are less than \$25,000) that originate and are provided solely within the boundaries of the park area. For example, the Director may issue an in-park commercial use authorization to a firewood sales operator who enters a park area campground to sell firewood to visitors. For another example, the Director may issue an in-park commercial use authorization to a person selling crafts in a park area on a one time or occasional basis. In both examples, the authorization may not be issued unless the Director projects that the holder's annual gross receipts from the services is less than \$25,000. If the Director projects that the annual gross receipts are expected to exceed \$25,000, an in-park commercial use authorization may not authorize the services. In that instance a concessions contract or other applicable authorization must be issued. In-park commercial use authorizations must contain appropriate provisions limiting the holder's provision of services in a manner consistent with the limitations of this part.

§ 52.7 Is a non-profit organization required to obtain a commercial use authorization in order to provide services to visitors in a park area?

Unless a non-profit organization holds a concession contract or is otherwise authorized to conduct visitor-related commercial activities in a park area, a non-profit organization is required to obtain a commercial use authorization in order to conduct visitor-related commercial activities in a park area if the non-profit organization derives taxable income from the conduct of the activities. If a non-profit organization

demonstrates to the satisfaction of the Director that it derives no taxable income from the provision of the services or if all income derived is exempt from taxation under the terms of the Internal Revenue Code, the non-profit organization will not be required to obtain a commercial use authorization in order to conduct the activity. However, the activities of a non-profit organization in a park area are subject to similar oversight and control through a Special Park Use Permit and issued according to the provisions of Director's Order 53 and Reference Manual 53 (DO-53/RM-53). The Special Park Use Permit shall include appropriate terms, conditions, and requirements, including without limitation insurance requirements and fees adopted by the Director under separate legal authority.

§ 52.8 When must the Director limit the number of Special Park Use Permits to be issued for a park area?

The Director must limit the number of Special Park Use Permits issued for a park area, including those issued to non-profit organizations, if the Director determines that issuing an unlimited number of such permits is inconsistent with the preservation and proper management of the resources and values of the park area or is inconsistent with the provisions of DO-53/RM-53.

Subpart C—Issuance of Commercial Use Authorizations.

§ 52.9 Who may be issued a commercial use authorization?

Any person may request the Director to issue a commercial use authorization in accordance with this part and if the Director issues a commercial use authorization, the Director upon request must issue a similar commercial use authorization to all qualified persons, subject to section 51.12 of this part. No one is entitled to issuance of a commercial use authorization. Issuance of a commercial use authorization is in the discretion of the Director.

§ 52.10 How does a person request the issuance of a commercial use authorization?

To request issuance of a commercial use authorization, a person must submit a written request. The written request must be mailed or delivered to the Director (to the attention of the Superintendent of the applicable park).

§ 52.11 What happens after a written request for issuance of a commercial use authorization is made?

If the Director determines, in accordance with section 52.4 of this

part, that it is not appropriate to issue a commercial use authorization for the specified commercial services, the Director will so advise the requester in writing. If the Director determines, in accordance with section 52.4 of this part, that it appears to be appropriate to issue a commercial use authorization for the specified services under this part, and the Director considers under this part that there is no need to limit the number of commercial use authorizations for the specified services, the Director will seek additional information to support completing the CUA form. The Director will then send the requester a proposed commercial use authorization with conditions. A signed copy of the proposed commercial use authorization, and, where required, a non-refundable application fee payment, must be submitted to the applicable park area. Upon receipt of this submission, the Director will make a final decision as to whether to issue a commercial use authorization for the specified commercial services in accordance with this part and as to whether the applicant is qualified to provide the services.

§ 52.12 When must the Director limit the number of commercial use authorizations to be issued?

The Director must limit the number of commercial use authorizations issued for a particular type of commercial services if the Director determines that issuing an unlimited number of such commercial use authorizations is inconsistent with the preservation and proper management of the resources and values of the park area. The Director must also limit the number of commercial use authorizations issued for a park area if the Director determines in accordance with section 52.14 of this part to establish visitor use limits and that continuation of issuance of an unlimited number of commercial use authorizations makes infeasible a fair and equitable distribution of visitor use allocations.

§ 52.13 What happens if the Director determines to limit the number of commercial use authorizations or Special Park Use Permits to be issued?

If the Director determines to limit the number of commercial use authorizations to be issued for a particular type of commercial services, the issuance of the available commercial use authorizations must be accomplished by the Director by random selection under which all qualified applicants have an equal opportunity to obtain an authorization. Special Park Use Permit applicants,

including non-profit organization applicants, would have similar limitations placed on the number of permits issued based on criteria outlined in DO-53/RM-53. An incumbent holder will have no right or any form of preference to issuance of a subsequent commercial use authorization or Special Park Use Permit.

§ 52.14 When will the Director establish visitor use limits?

The Director will establish visitor use limits if the Director determines that the limits are appropriate to protect park area visitors or resources. If visitor use limits are established, authorized visitor use will be allocated by the Director among all holders of commercial use authorizations and Special Park Use Permits in a fair and equitable manner. Incumbent holders have no right of preference for visitor use allocations. If it is not feasible to fairly and equitably allocate limited visitor use among all holders, the Director must limit the number of commercial use authorizations to be issued in accordance with this part.

§ 52.15 What special responsibilities does the Director have if only a limited number of commercial use authorizations are issued or if the Director establishes visitor use limits?

If the Director limits the number of commercial use authorizations issued for a park area with respect to a particular type of commercial services, and/or, if the Director establishes visitor use limits under this part, the Director must take appropriate measures to assure that all holders provide quality services to visitors at rates and charges that are reasonable and appropriate. Unless otherwise provided in the contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant to the Director: length of season, peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, and type of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services after taking into account the factors referred to in the preceding sentence.

§ 52.16 What fees must the Director charge in connection with a commercial use authorization?

The Director must charge a reasonable fee for a commercial use authorization, in addition to any application fee. The fee must at least be sufficient to recover the Director's costs associated with management and administration of the holder's activities under the authorization. The fee may also include the costs for the maintenance and repair of park area resources impacted by the holder's activities. If a holder is assigned the use of improvements within a park area, the fee must also include the fair value of the use of the assigned improvements.

§ 52.17 How will the Director expend fees received from holders?

All fees paid to the Director pursuant to commercial use authorizations shall be expended in the park area where collected to pay for management and administrative costs associated with commercial use authorizations and for other park area activities.

Subpart D—Terms and Conditions of Commercial Use Authorizations**§ 52.18 What is the term of a commercial use authorization?**

A commercial use authorization must have a term of two years or less.

§ 52.19 May a commercial use authorization be transferred?

No. A commercial use authorization is not transferable. All commercial use authorizations must contain provisions prohibiting their sale or transfer.

§ 52.20 May a commercial use authorization provide an exclusive right to provide commercial services in a park area?

No. Commercial use authorizations may only authorize a non-exclusive right to provide commercial services in a park area.

§ 52.21 May a commercial use authorization permit the construction of structures, fixtures, or improvements on lands located within the boundaries of a park area?

No. A commercial use authorization may not authorize the construction of structures, fixtures or improvements on lands located within the boundaries of a park area. A commercial use authorization may assign a holder use of existing structures, fixtures or improvements when necessary to assist in providing services to visitors. An incumbent holder shall have no right or any form of preference to the continuing utilization of assigned structures, fixtures or improvements under the

terms of a subsequent commercial use authorization.

§ 52.22 May the Director terminate a commercial use authorization?

Yes. A commercial use authorization must contain appropriate provisions allowing the Director to terminate the authorization without liability at any time at the discretion of the Director.

§ 52.23 What reporting requirements must a commercial use authorization contain?

Commercial use authorizations must contain appropriate provisions requiring the permittee to provide the Director annually a statement of its gross receipts for the prior year's activities and any specific information related to the commercial use that the Director may request, including but not limited to, visitor use statistics and resource impact assessments. If a commercial use authorization authorizes the conduct of commercial services in more than one park area, gross receipts and other requested information and reports must be provided on an individual park area basis.

§ 52.24 May incumbent holders obtain rights or a preference to the issuance of subsequent visitor use authorizations or to particular visitor use allocations?

No. A commercial use authorization will not grant the holder a right or preferences of any form to the issuance of subsequent commercial use authorizations or to particular visitor use allocations.

§ 52.25 What records must a holder maintain and what access does the Director have to these records?

A commercial use authorization must contain appropriate provisions requiring the holder to maintain normal accounting books and records and granting the Director and the General Accounting Office access to such books and records at any time for the purpose of determining compliance with the terms of a commercial use service authorization and this part.

§ 52.26 What other terms and conditions may or must a commercial use authorization contain?

Commercial use authorizations must contain such provisions as are otherwise required by law and must contain such provisions as the Director determines are necessary and appropriate (1) to protect park area visitors; (2) to assure that holders provide appropriate services to visitors; and (3) to protect and properly manage the resources and values of the park area. Commercial use authorizations must also contain appropriate provisions strictly limiting the holder's conduct of services to the

services specified in the authorization issued.

Dated: November 13, 2002.

Paul Hoffman,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 02-29783 Filed 11-26-02; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No.; I.D. 110602A]

RIN 0648-AQ30

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2003 Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2003 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) require NMFS to publish specifications for the upcoming fishing year for each of the species and to provide an opportunity for public comment. NMFS requests comment on proposed management measures for the 2003 summer flounder, scup, and black sea bass fisheries. The intent of this action is to establish allowed 2003 harvest levels and other measures to attain the target fishing mortality (F) or exploitation rates, as specified for these species in the FMP.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on December 12, 2002.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive,