

*Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

*I. National Technology Transfer Advancement Act*

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

*K. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)*

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

*L. Executive Order 12988: Civil Justice Reform*

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

**List of Subjects in 40 CFR Part 721**

Environmental protection, Chemicals, Hazardous substances, Premanufacture notification, Reporting and recordkeeping requirements.

Dated: November 30, 2004.

**Charles M. Auer,**

*Director, Office of Pollution Prevention and Toxics.*

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

**PART 721—[AMENDED]**

1. The authority citation for part 721 would continue to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.10000 to subpart E to read as follows:

**§ 721.10000 Certain polybrominated diphenylethers.**

(a) *Chemical substances and significant new uses subject to reporting.*

(1) The chemical substances identified as tetrabromodiphenyl ether (CAS No. 40088-47-9; Benzene, 1,1'-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether (CAS No. 32534-81-9; Benzene, 1,1'-oxybis-, pentabromo deriv.), hexabromodiphenyl ether (CAS No. 36483-60-0; Benzene, 1,1'-oxybis-, hexabromo deriv.), heptabromodiphenyl ether (CAS No. 68928-80-3; Benzene, 1,1'-oxybis-, heptabromo deriv.), octabromodiphenyl ether (CAS No. 32536-52-0; Benzene, 1,1'-oxybis-, octabromo deriv.), and nonabromodiphenyl ether (CAS No. 63936-56-1; Benzene, pentabromo(tetrabromophenoxy)-), and any combination of these substances resulting from a chemical reaction are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is manufacture or import for any use on or after January 1, 2005.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for section 721.5(a)(2). A person who intends to manufacture or import for commercial purposes the substances identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

[FR Doc. 04-26731 Filed 12-1-04; 2:54 pm]

**BILLING CODE 6560-50-S**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AT65**

**Endangered and Threatened Wildlife and Plants; Establishment of an Additional Manatee Protection Area in Lee County, FL**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of public hearing and reopening of public comment period.

**SUMMARY:** We, the Fish and Wildlife Service (Service), provide notice that the public comment period for the proposed rule to establish the Pine Island-Estero Bay Manatee Refuge in Lee County, Florida, is reopened to allow all interested parties to submit written comments on the proposed rule. We are reopening the public comment period to accommodate those individuals and communities that are continuing to recover from the effects of both Hurricane Charley and Hurricane Frances. Comments previously submitted during the initial comment period need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on the proposal.

**DATES:** The original comment period closed on October 5, 2004. The comment period is hereby reopened until February 2, 2005. Comments from all interested parties must be received by the closing date. Any comments received after the closing date may not be considered in the final decision on this proposal. Furthermore, the public hearing that was originally scheduled for Wednesday, September 8, 2004, has been rescheduled for Wednesday, January 12, 2005, from 6:30 p.m. to 9:30 p.m. in Fort Myers, Florida. See additional information on the public comment process in the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** A formal public hearing will be held on Wednesday, January 12, 2005, from 6:30 p.m. to 9:30 p.m. at the Harborside Convention Hall, 1375 Monroe Street, Fort Myers, Florida.

If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, South Florida Field Office, U.S. Fish and Wildlife Service, Attn: Proposed Manatee Refuge, 1339 20th Street, Vero Beach, Florida 32960.

2. You may hand-deliver written comments to our South Florida Field Office, at the above address, or fax your comments to (772) 562-4288.

3. You may send comments by electronic mail (e-mail) to [verobeach@fws.gov](mailto:verobeach@fws.gov). For directions on how to submit electronic comment files, see the "Public Comments Solicited" section.

We request that you identify whether you are commenting on the proposed rule or draft environmental assessment. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m. at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jay Slack or Kalani Cairns (see **ADDRESSES** section), telephone (772) 562-3909; or visit our Web site at <http://verobeach.fws.gov>.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Comments Solicited**

We solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why this area, particularly the waters known as Long Cut and Short Cut as well as any shallow water embayments within the proposed area, should or should not be designated as manatee refuges, including data in support of these reasons;

2. Current or planned activities in the subject areas and their possible effects on manatees;

3. Any foreseeable economic or other impacts resulting from the proposed designations;

4. Potential adverse effects to the manatee associated with designating manatee protection areas for the species; and

5. Any actions that could be considered in lieu of, or in conjunction with, the proposed designations that would provide comparable or improved manatee protection.

We request that you identify whether you are commenting on the proposed rule or draft environmental assessment. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m. at the above address. You may obtain copies of

the draft environmental assessment from the above address or by calling (772) 562-3909 or from our Web site at <http://verobeach.fws.gov>.

Comments submitted electronically should be embedded in the body of the e-mail message itself or attached as a text-file (ASCII) and should not use special characters and encryption. Please also include "Attn: RIN 1018-AT65," your full name, and return address in your e-mail message. Comments submitted to [verobeach@fws.gov](mailto:verobeach@fws.gov) will receive an automated response confirming receipt of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our South Florida Field Office (see **ADDRESSES** section).

Our practice is to make all 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. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. 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.

Our final determination on the proposed rule will take into consideration comments and any additional information received by the date specified above. Previous comments and information submitted during the original comment period need not be resubmitted. The comment period is reopened until February 2, 2005.

##### **Background**

Manatees are a federally protected under both the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA). Currently, collisions with watercraft probably constitute the greatest human-caused threat to the species. Historically, these collisions are responsible for about 25 percent of all manatee deaths and about 80 percent of all human-caused mortality in manatees.

In November 2002, a judge in Florida's 20th Judicial Circuit Court

ruled that five State-designated manatee protection zones were invalid because the rule for four regulated areas did not meet the State standard for frequency of sightings and unduly interfered with the rights of voters. Since January 2004, the Florida Fish and Wildlife Conservation Commission have recovered four manatee carcasses in the affected areas. Subsequent necropsies reveal these animals died of wounds suffered from a boat collision. There have been at least 18 boat-related manatee deaths in these five areas since 1999.

For these reasons, we believe that there is imminent danger of take of one or more manatees in these areas and the designation of a manatee refuge is necessary to prevent such taking. Manatees utilize these areas, there is a history of take at these sites, future take is imminent, protection measures are insufficient, and we do not anticipate any alternative protection measures being enacted by State or local government in sufficient time to reduce the likelihood of take occurring.

On April 7, 2004 we published an emergency designation of this area. This designation expired on August 5, 2004. The second emergency designation will be in effect until December 4, 2004. At that time, we plan to publish a third emergency designation in order to have adequate time to complete the normal rulemaking process (currently underway). Due to recent hurricanes in the area of Lee County, we are reopening the public comment period to allow all interested parties to provide comments.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA and is codified in 50 CFR, part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees.

##### **Author**

The primary author of this document is Kalani Cairns (see **ADDRESSES** section).

##### **Authority**

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), as amended.

Dated: November 4, 2004.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 04-26709 Filed 12-3-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. I.D. 041110317-4317; I.D. 110404B]

RIN 0648-AR51

#### 50 CFR Part 648

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2005 and 2006 Summer Flounder Specifications; 2005 Scup and Black Sea Bass Specifications; 2005 Research Set-Aside Projects

**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 2005 and 2006 summer flounder fisheries, and for the 2005 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. This proposed rule also would make changes to the regulations regarding the commercial scup fishery. The intent of this action is to establish harvest levels and other measures to attain the target fishing mortality rates (F) or exploitation rates specified for these species in the FMP, and to reducing bycatch and improve the efficiency of the commercial scup fishery. NMFS has conditionally approved three research projects for the harvest of the portion of the quota that has been recommended by the Mid-Atlantic Fishery Management Council (Council) to be set aside for research purposes. In anticipation of receiving applications for Experimental Fishing Permits (EFPs) to conduct this research, the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the activities authorized under the EFPs issued in

response to the approved Research Set-Aside (RSA) projects would be consistent with the goals and objectives of the FMP. However, further review and consultation may be necessary before a final determination is made to issue any EFP.

**DATES:** Comments must be received on or before December 21, 2004.

**ADDRESSES:** Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for the specifications are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The specifications document is also accessible via the Internet at <http://www.nero.nmfs.gov>. Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments—Summer Flounder, Scup, and Black Sea Bass Specifications." Comments may also be sent via facsimile (fax) to 978-281-9135, or via e-mail to the following address: [FSB2005@noaa.gov](mailto:FSB2005@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: "Comments on Summer Flounder, Scup, and Black Sea Bass Specifications." Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

**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 fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Council, in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

The regulations outline the process for specifying annually the catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F or exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP.

As required by the FMP, a Monitoring Committee for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, is required to review the best available scientific information and to recommend catch limits and other management measures that will achieve the target F or exploitation rate for each fishery. Consistent with the implementation of Framework Adjustment 5 to the FMP (69 FR 62818, October 28, 2004), each Monitoring Committee meets annually to recommend the Total Allowable Landings (TAL), unless the TAL has already been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) then consider the Monitoring Committees' recommendations and any public comment and make their own recommendations. While the Board action is final, the Council's recommendations must be reviewed by NMFS to assure that they comply with FMP objectives. The Council and Board made their recommendations at a joint meeting held August 11, 2004.

##### Explanation of RSA

In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to 3 percent of the TAL for each of the species to be set aside each year for scientific research purposes. For the 2005 fishing year, a Request for