

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE OKLAHOMA SIP—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
Interstate transport for the 1997 PM _{2.5} NAAQS (contribute to nonattainment or interfere with maintenance).	Statewide	5/1/2007	12/29/11 [Insert FR page number where document begins].	
Interstate transport for the 2006 PM _{2.5} NAAQS (contribute to nonattainment or interfere with maintenance).	Statewide	4/5/2011	12/29/11 [Insert FR page number where document begins].	

[FR Doc. 2011-33282 Filed 12-28-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-R04-SFUND-2011-0574; FRL-9612-5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hips Road Landfill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is publishing a direct final Notice of Deletion of the Hips Road Landfill Superfund Site (Site), located in Jacksonville, Florida, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Florida, through the Florida Department of Environmental Protection, because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective February 27, 2012 unless EPA receives adverse comments by January 30, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA-R04-SFUND-2011-0574, by one of the following methods:

- <http://www.regulations.gov>. Follow on-line instructions for submitting comments.
- *Email:* miller.scott@epa.gov
- *Fax:* (404) 562-8896
- *Mail:* Scott Miller, Remedial Project Manager, Superfund Remedial Branch, Section C, Superfund Division, U.S. EPA Region 4, 61 Forsyth Street SW., Atlanta, GA 30303.
- *Hand delivery:* Same address as listed above. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA-R04-SFUND-2011-0574. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be

able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at: U.S. EPA Record Center, 61 Forsyth Street SW., Atlanta, GA 30303; Hours: 8 a.m. to 4 p.m., Monday through Friday. Jacksonville Public Library, 6886 103rd Street, Jacksonville, FL 32210; Monday-Thursday: 10 a.m.-9 p.m., Friday & Saturday: 10 a.m.-6 p.m. Sunday: 1 p.m.-6 p.m.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, GA 30303, (404) 562-9120, email: miller.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA Region 4 is publishing this direct final Notice of Deletion of the Hips Road Landfill (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant

risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective *February 27, 2012* unless EPA receives adverse comments by *January 30, 2012*. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Hipps Road Landfill Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

- i. responsible parties or other persons have implemented all appropriate response actions required;
- ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of Florida prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the Florida Department of Environmental Protection (FDEP) 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the FDEP, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, Florida Times-Union. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take

enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The twelve acre Hipps Road Landfill Site (EPA CERCLIS Identification Number FLD980709802) is located on the southeastern corner at the intersection of Hipps Road and Exline Road in Jacksonville Heights, Duval County, Florida. Landfill operations were conducted on approximately six acres of the Site. The Site is surrounded by a residential neighborhood. The Site's landfill area was initially a cypress swamp. In 1968, property owner G. O. Williams contracted with Waste Control of Florida (WCF) to fill the low-lying areas of the property. Landfill operations ceased in 1970 and were covered by soil. In the early 1980s, residents complained about unusual tastes and odors in private water wells, which led to investigations that identified groundwater contamination. The City of Jacksonville began to provide residents with bottled water for use as a potable water source. The City of Jacksonville completed the extension of a city water line to the affected area in October 1983 and by September 1985, all area residents were connected to the public water system. WCF acquired the residential properties in 1987. Waste Management Corporation (WM) inherited the Site property through its acquisition of WCF. Surface water is not used as a drinking water supply in the area. Surface waters nearby are used for recreational purposes such as swimming, boating, and fishing. There are no ecologically sensitive areas near the Site, which is situated above the 500-year flood plain. WM, the current landowners, have expressed interest in using the Site as a wildlife habitat area. The Site was proposed to the NPL in September 1983 (48 FR 40674) and was finalized to the NPL on September 21, 1984 (49 FR 37070).

Remedial Investigation and Feasibility Study (RI/FS)

In May 1986, EPA presented the results of the RI/FS, which included geophysical investigations, soil sampling, and groundwater sampling to

characterize the Site. The results indicated that Site groundwater was the media of concern, and the migration of contaminants would occur in the lower sand aquifer located to the northeast of the landfill.

The contaminants of concern (COCs) identified at the Site in the Site's 1990 ROD Amendment were bis (2-ethylhexyl) phthalate, chlorobenzene, chromium, 1,4-dichlorobenzene, trans-1,2-dichloroethylene, ethyl benzene, lead, naphthalene, and vinyl chloride. The risk assessment conducted during the FS concluded that none of the compounds detected in Site soil were present at concentrations of toxicological concern. The RI/FS was completed in September 1986.

Seven groundwater and five soil remedial actions were retained for detailed evaluation in the FS and were evaluated based on the National Contingency Plan decision criteria found at 40 CFR 300.430(e)(9) and include nine separate criteria used to evaluate each combination of remedial alternatives.

Selected Remedy

The ROD was released on September 3, 1986. The remedy for the Site included the following components:

- Proper landfill closure in a manner consistent with all applicable federal, state and local requirements.
- Recovery of contaminated groundwater with treatment at the publicly owned treatment works (POTW).
- Long-term monitoring of groundwater.
- Operation and maintenance includes upkeep of the landfill cap, groundwater monitoring, and maintenance of the groundwater recovery system. O&M will continue for at least 20 years after the final groundwater recovery operation.
- Institutional controls may include, but are not limited to, fencing the site, continuance of the local well drilling prohibition, land use restrictions, grouting existing private wells, and public or PRP acquisition of private lands.

In September 1990, EPA amended the ROD to provide for on-Site groundwater treatment and disposal as a more cost effective treatment alternative to disposal of groundwater to the publicly-owned treatment works (POTW). The 1990 ROD Amendment changed the remedy to the recovery of groundwater from five recovery wells; treatment of contaminated groundwater by air stripping; and the use of an on-Site holding pond for disposal of treated groundwater.

In August 1994, EPA issued an ESD to alter the method by which the abandonment of private wells impacted by the Site groundwater was achieved. In June 1996, EPA issued a second ESD to address operating difficulties at the groundwater treatment system during excessive rainfall and/or effluent discharges. During this situation, the high water level switch in the holding pond would trigger a system shutdown. In an effort to keep the treatment system operational, the ESD allowed for the periodic discharge of treated groundwater to the local POTW during high water levels in the holding pond.

In July 2004, EPA issued a third ESD, which changed the existing pump-and-treat recovery system to a monitored natural attenuation (MNA) plan to complete remediation of remaining groundwater contaminants.

Response Actions

On May 22, 1989, the landfill closure design was completed. The Remedial Design used a standard municipal cap design consisting of:

- a. General earthfill cover to provide a crown over the landfill area with a minimum grade of 2.5 percent towards the perimeter of the landfill.
- b. One foot of low-permeability clay having a permeability of 1×10^{-6} cm/s or less.
- c. Two feet of vegetative soil cover and vegetative cover.

The Remedial Action construction for both the landfill closure and groundwater treatment system began in October 1989 and was completed on September 2, 1993, as documented in the September 9, 1994, Preliminary Closeout Report. Construction of the landfill cap was completed in April 1990 and final inspection of the landfill cover was April 26, 1990. The complete groundwater treatment system was constructed from May through August 1993. The groundwater treatment system included the installation of recovery wells, air-stripping system, and air blower system. Long-term groundwater monitoring began on March 15, 1994.

As recommended in the 2001 MNA Pilot Study Report, the Remedial Goal Verification Plan (RGVP) monitoring program was replaced with the MNA long-term monitoring program beginning in September 2004. The MNA long-term monitoring program called for groundwater monitoring well sampling semi-annually.

The wells included in the MNA long-term monitoring program fulfilled the following four purposes: (1) Confirm ongoing natural attenuation mechanisms; (2) ensure that benzene

and vinyl chloride concentrations continue to be below cleanup goals; (3) monitor benzene and vinyl chloride in groundwater in areas in proximity to (or upgradient of) potential receptors; and (4) monitor the efficiency of the landfill cap. The MNA long-term monitoring program included the following tasks:

- Semi-annual hydraulic (water level) monitoring of piezometers, monitoring wells, and recovery wells, as specified in the RGVP.

- Semi-annual groundwater sample collection at upgradient wells TMW-11 and TMW-5I; side-gradient wells TMW-10I; and plume wells TMW-9I, TMW-13I, and RW-2 for analyses of volatile organic compounds (VOCs) via EPA Method 8260B. EPA approved discontinuing sampling and analysis of MNA long-term monitoring program wells TMW-7I, RW-3, TMW-6I, and RW-1 on March 3, 2006. Concentrations of benzene and vinyl chloride detected in these monitoring wells were below ROD cleanup criteria for four or more consecutive quarters and satisfied the cleanup criteria for the RGVP and MNA monitoring program.

- Semi-annual field monitoring of the following parameters where groundwater samples were collected: dissolved oxygen, oxidation reduction potential, conductivity, pH, and temperature.

- Annual groundwater sample collection for the analyses of biogeochemical parameters and dissolved gases, and field analysis of alkalinity, sulfide, and ferrous iron.

Groundwater monitoring occurred semi-annually and associated reports were submitted to EPA semi-annually. Off-Site wells were sampled until cleanup goals were achieved for four consecutive sampling events in February 2010.

Since the Site's 2005 Five Year Review, the landfill cover, infiltration pond, and security fencing were inspected semi-annually; each Site inspection found that they were properly maintained. In addition, each semi-annual report has shown that:

- Site security, including a locked gate and perimeter fencing with appropriate notice signs, was in place.
- Stormwater management features were functioning as designed.
- The landfill cover was inspected.
- No adverse conditions were observed.

The Site has two institutional controls in place that provide protection to potential receptors. The Site lies within a Florida Groundwater Delineation Area found at Florida Administrative Code (FAC) 62-524, which restricts placement of new wells on the property

and surrounding areas. This regulation was codified on March 25, 1990. The Site also lies within the jurisdiction of the St. John's River Water Management District (SJRWMD), which implements water supply well permitting controls and restricts groundwater withdrawals. A restrictive covenant recorded in the Duval County real estate records for the five parcels that constitute the Site restricts land use so that there would be no land disturbance which would effect the integrity of the final landfill cover or any component of the containment system without approval from the EPA Region 4 Regional Administrator. This restrictive covenant was recorded on January 24, 1988.

Cleanup Goals

Groundwater sampling data from September 2005 through September 2009 has been reviewed to determine cleanup goal attainment. In addition, groundwater sampling results of three off-Site wells, TMW-91, TMW-131 and RW-2, were reviewed from November 2009 and February 2010. No COCs have been detected in any off-Site well since 2008. No COCs have been detected above cleanup goals in on-Site wells since the 2005 Five Year Review.

TABLE 1—CONTAMINANTS OF CONCERN AND THEIR CLEAN UP GOALS

Contaminants of concern	Clean up goals (µg/L)
Benzene	1
Chlorobenzene	100
Chromium	100
1,4-dichlorobenzene	75
Trans-1,2-dichloroethylene ...	100
Ethyl benzene	700
Lead	15
Naphthalene	140
Vinyl chloride	1

Through the Fifty-First Monitoring and Maintenance Report monitoring period which has groundwater monitoring data obtained from April 1, 2009 to September 20, 2009, only three MNA monitoring wells (TMW-91, TMW-131, and RW-2) had not achieved the ROD cleanup criteria of four consecutive sampling events with results below cleanup goals. Benzene was detected above the cleanup goal of 1 µg/L in the three wells at concentrations ranging from 1.0 to 4.5 µg/L. Vinyl chloride was detected above the cleanup goal of 1 µg/L in RW-2 once in October 2005 and in TMW-131 in March and September 2006 and March 2007. Additional sampling of TMW-91, TMW-131 and RW-2 was performed in November 2009 and February 2010. The March 2010 Final Monitoring and

Maintenance Report and Site Delisting Request included the supplemental TMW-91, TMW-131, and RW-2 sampling results, which found no COCs above cleanup goals. No COCs were detected above cleanup goals in the February, September, and November 2009 and February 2010 sampling. As of February 2010, all monitoring wells have met the ROD criteria of meeting cleanup goals for four consecutive monitoring events.

Operation and Maintenance

Waste Management designed and implemented an Operation and Maintenance Plan to ensure the long-term effectiveness of the ROD remedial elements. This Operations and Maintenance Plan was submitted on May 17, 1994. This Plan addressed maintaining the integrity and effectiveness of the final cover, including repairing the landfill cover; maintenance and sampling of the groundwater monitoring network; and protecting and maintaining surveyed benchmarks associated with institutional controls.

Five-Year Review

Since hazardous substances are present onsite above levels allowing for unlimited use and unrestricted exposure, statutory Five Year Reviews will be conducted by EPA every five years, pursuant to CERCLA Section 121 (c) and as provided in OSWER Directive 9355.7-03B-P, *Comprehensive Five-Year Review Guidance* (EPA, 2001). The purpose of these reviews is to ensure that the Site remedy remains protective of human health and the environment. The first Five Year Review at the Site was conducted in February 1996, the second in July 2000, the third in September 2005, and the fourth in July 2010.

The Fourth Five-Year Review concluded that remedial actions at the Hipps Road Landfill Superfund Site are protective of human health and the environment in the short term, and exposure pathways that could result in unacceptable risks are being controlled. In order for the site to remain protective in the long-term, the Site needed to be assessed to determine if ICs are necessary to prevent inappropriate land use. Further analysis of existing groundwater use prohibitions related to the delineated areas and examination of the existing restrictive covenant indicate that all institutional controls needed at the Site have been implemented. EPA will complete the next Five Year Review by July 2015.

Community Involvement

A public meeting was held on May 7, 1986, to present EPA's proposed plan for remedial action to the local community. Since that time community involvement activities, including community interviews, have occurred during each Five-Year review period (1996, 2000, 2005, 2010). Copies of site documents are in the designated Site repository at the Jacksonville Public Library, Webb-Wescosnett Regional Branch located at 6887 103rd St., Jacksonville, Florida.

Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, Florida Times-Union. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP specifies that EPA may delete a site from the NPL if "all appropriate responsible parties or other persons have implemented all appropriate response actions required" or "all appropriate fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate". EPA, with the concurrence of the State of Florida through the FDEP by a letter dated April 22, 2011, has determined that the Site responsible party Waste Management has implemented all appropriate response actions required and no further response action is required. Therefore, EPA is proposing the deletion of the site from the NPL. All of the completion requirements for the site have been met as described in the Hipps Road Landfill Final Close Out Report (FCOR) dated April 21, 2011.

V. Deletion Action

The EPA, with concurrence of the State of Florida through the FDEP, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective *February 27, 2012* unless EPA receives adverse comments by *January 30, 2012*. If adverse comments are received within the 30-day public comment period, EPA

will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 21, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry “Hippis Road Landfill”, “Duval County” under FL.

[FR Doc. 2011–33472 Filed 12–28–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111219777–1775–02]

RIN 0648–BB52

Fisheries of the Northeastern United States; Removal of Standardized Bycatch Reporting Methodology Regulations

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

ACTION: Final rule.

SUMMARY: This action removes regulations implementing the Northeast Region Standardized Bycatch Reporting Methodology (SBRM). To comply with the D.C. Circuit Court’s decision, NMFS

announces that the Northeast Region SBRM Omnibus Amendment is vacated and all regulations implemented by the SBRM Omnibus Amendment final rule are removed. The intended effect of this rule is to revise regulatory language to refer specifically to the industry-funded observer program in the scallop fishery.

DATES: Effective January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 2011, upon the order of the U.S. Court of Appeals for the District of Columbia Circuit, the U.S. District Court for the District of Columbia, in the case of *Oceana, Inc. v. Locke* (Civil Action No. 08–318), vacated the Northeast Region Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment and remanded the case to NMFS for further proceedings consistent with the D.C. Circuit Court’s decision. To comply with the ruling, NMFS announces that the Northeast Region SBRM Omnibus Amendment is vacated and all regulations implemented by the SBRM Omnibus Amendment final rule (73 FR 4736, January 28, 2008) are removed.

The removal of regulations implementing the SBRM Omnibus Amendment is not an exact reversal of the regulation amendatory instructions as written in the January 28, 2008, final rule. Some regulatory changes that occurred subsequent to the SBRM Omnibus Amendment final rule had to be accommodated. The final rule implementing the Annual Catch Limit and Accountability Measure Omnibus Amendment (76 FR 60606, September 29, 2011) reorganized the regulations for some species managed by the Mid-Atlantic Fishery Management Council and changed where SBRM provisions were located. In addition, the final rule implementing Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (73 FR 20090, April 14, 2008) and the final rule implementing Amendment 3 to the Northeast Skate Complex FMP (75 FR 34049, June 16, 2010) inadvertently overwrote the SBRM provisions for those fisheries. Therefore, this action does not need to remove SBRM provisions in those two fisheries.

This action removes the SBRM section at § 648.18 and removes SBRM-related items from the lists of measures that can be changed through the FMP framework adjustment and/or annual specification process for the Atlantic

mackerel, squid, and butterflyfish; Atlantic surfclam and ocean quahog; Northeast multispecies, monkfish; summer flounder; scup; black sea bass; bluefish; Atlantic herring; spiny dogfish; deep-sea red crab; and tilefish fisheries. This action also makes changes to the regulations regarding observer service provider approval and responsibilities and observer certification. The SBRM Omnibus Amendment had authorized the development of an industry-funded observer program in any fishery, and the final rule modified regulatory language in these sections to apply broadly to any such program. This action revises that regulatory language to refer specifically to the industry-funded observer program in the scallop fishery, which existed prior to the adoption of the SBRM Omnibus Amendment.

Classification

The Assistant Administrator for Fisheries finds it is unnecessary, impracticable, and contrary to the public interest to provide for prior notice and an opportunity for public comment. This action is required by Court order and, therefore, NMFS has no discretion in implementing this rule. The September 15, 2011, Court order requires NMFS to vacate the SBRM Omnibus Amendment and the implementing regulations. Public comments will not affect the Court’s order. Therefore, prior notice and the opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), is unnecessary and impracticable because of the Court order.

This final rule is promulgated under NMFS’ general rule making authority specified at 16 U.S.C. 1855(d), and is issued to bring the regulations into compliance with the U.S. District Court for the District of Columbia’s order vacating the SBRM Omnibus Amendment.

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

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment. Accordingly, no initial regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.