K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 22, 2002.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: May 7, 2002.

Marianne Lamont Horinko,

Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.44, the table in paragraph (o) is amended by adding in alphabetical order two new entries for ''CWM Chemical Services LLC, Model City, New York'; and ''U.S. Ecology Idaho, Incorporated, Grandview, Idaho'' and Footnotes 9 and 10 to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER SEC. 268.40

Facility name[1] and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
* *		*	*	*	*	*	
CWM Chemical Services, LLC, Model City, New York.	K088[9]	Standards under § 268.40.	Arsenic	1.4	NA	5.0 mg/L TCLP ...	NA
* *		*	*	*	*	*	
U.S. Ecology Idaho, Incorporated, Grandview, Idaho.	K088[10]	Standards under § 268.40.	Arsenic	1.4	NA	5.0 mg/L TCLP ...	NA * * * * * * *
* *		*	*	*	*	*	

[1] * * *

* * * * *

[9] This treatment standard applies only to K088-derived bag house dust, incinerator ash, and filtercake at this facility.

[10] This treatment standard applies only to K088-derived air emission control dust generated by this facility.

Note: NA means Not Applicable.

[FR Doc. 02–12768 Filed 5–21–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020329075–2124–03; I.D. 031902E]

RIN 0648–AP11

Fisheries of the Northeastern United States; Monkfish Fishery;Framework 1; Emergency Measures

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

ACTION: Disapproval of Framework 1; emergency interim rule; request for comments.

SUMMARY: NMFS notifies the public that it has disapproved proposed Framework 1 to the Monkfish Fishery Management Plan (FMP). NMFS is issuing this emergency interim rule to amend temporarily the monkfish fishing mortality rate (F) criteria in the FMP to be consistent with those recommended by the most recent stock assessment (SAW 34; January 2002). This emergency rule also implements the management measures that were proposed in Framework 1 to the FMP because, with the amendment of the F criteria in the FMP, these measures are consistent with the best available scientific information. The intended effect of this rule is to suspend temporarily the restrictive Year 4 default management measures that became effective May 1, 2002, and to implement management measures for the monkfish fishery based on the best scientific information.

DATES: Effective May 17, 2002 through November 18, 2002. Comments on this emergency rule must be received no later than 5 p.m. EDT June 14, 2002.

ADDRESSES: Comments on the emergency rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments on Monkfish Emergency Rule.'' Comments may also be submitted via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the emergency rule, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR) are available upon request from Patricia A. Kurkul at the address listed above. The EA/RIR is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst,

(978) 281–9103, fax (978) 281–9135, e-mail Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils (Councils), with the New England Fishery Management Council having the administrative lead. The objectives of the management program established by the FMP are to eliminate overfishing by May 2002 and to rebuild the stock by 2009. In order to ensure the elimination of overfishing by May 2002, the FMP specified that restrictive measures be implemented for Year 4 of the management program (May 1, 2002—April 30, 2003), unless a 3–year review of the stock status indicates that these restrictive measures are not necessary. The Year 4 default measures, which became effective on May 1, 2002, eliminated the directed monkfish fishery by allocating zero monkfish days-at-sea (DAS) and by allowing only incidental landings of monkfish.

As required by the regulations at 50 CFR 648.96(b), a 3–year review of the management program was conducted by the Monkfish Monitoring Committee. Based on the results of this review, the Councils submitted Framework 1, which presented alternative management measures for Year 4. A proposed rule seeking public comment on Framework 1 was published in the **Federal Register** on April 4, 2002 (67 FR 16079). The measures proposed in Framework 1 were as follows: (1) A 1–year delay in implementing the restrictive Year 4 default management measures; (2) a target TAC of 19,595 metric tons (mt), with area-specific TACs of 11,674 mt and 7,921 mt for the Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA), respectively; (3) allocation of 40 DAS to limited access monkfish vessels for the 2002 fishing year (May 1, 2002 - April 30, 2003); (4) a revision to the monkfish trip limits in the SFMA to 550 lb (249 kg) (tail weight per DAS) for vessel permit categories A and C, and 450 lb (204 kg) (tail weight per DAS) for vessel permit categories B and D while fishing on a monkfish DAS in the SFMA; and (5) maintenance of all other measures as established for Year 3 of the FMP, including less restrictive incidental catch limits.

Based upon the F criteria recommended by SAW 34 and the 2001 NMFS fall trawl survey, the measures contained in Framework 1 were initially determined to be consistent with the FMP objectives of ending overfishing in 2002. However, that determination was based on the F criteria recommended by SAW 34, not the F criteria in the FMP. Therefore, during a closer review of the F criteria in the FMP, NMFS determined that Framework 1 was not consistent with the FMP because the F criteria in the FMP have not yet been formally amended to reflect the best available information on the monkfish stock. Therefore, NMFS is disapproving Framework 1 because it is inconsistent with the FMP.

The FMP authorizes the Councils to revise the F criteria through framework action. However, the results of SAW 34 were not available until late January 2002, when the Councils approved Framework 1, which was too late to incorporate the new scientific information into the framework action in order to have measures in place before the default measures became effective on May 1, 2002.

The F thresholds defined in the FMP are F=0.05 for the NFMA and F=0.14 for the SFMA. The FMP F targets and thresholds were generated using reference points and estimates of contemporaneous fishing mortality from SAW 23 (March 1997). Estimates of those reference points were recalculated during SAW 31 (October 2000) using updated data and under different hypotheses, which were considered to be more reasonable, regarding the mean length at full selection.[1] This resulted in negative estimates of the F threshold for the NFMA, which is an unrealistic result, indicating that the F reference points in the FMP are not reliable as indicators of stock status with respect to exploitation rates. As a result, the 31st Stock Assessment Review Committee (SARC) concluded that the fishing mortality reference points established in the FMP needed to be reevaluated.

The 34th SARC recognized inherent flaws in the method used to establish the F criteria in the FMP and discussed potential alternatives for establishing revised F criteria. The SARC stated that information now exists to estimate current F rates by age, and that yield per recruit (YPR) analyses could be used to establish revised reference points. Based on a provisional YPR analysis, the SARC recommended F thresholds of F=0.2 and F targets of F=0.14 for the stock units in both the NFMA and the SFMA.

The FMP includes target TAC levels projected to be consistent with the fishing mortality objectives of the FMP. The FMP's planned reductions in the target TACs were based on achieving the F threshold in the fourth year of management. However, when the F thresholds were found to be invalid, the TACs also became invalid.

The current assessment methodology is adequate to estimate the level of F in recent fishing years. In Framework 1, the Councils considered information from SAW 34 that provided a range of F estimates for calendar year 2000. Within the range of estimates, the SAW attached the most significance to those derived from the recent cooperative industry survey, which was conducted in February—April 2001. The most probable estimates of F derived from the cooperative survey ranged from about 0.25 to about 0.4. These estimates include only 7 months of monkfish DAS restrictions and trip limits and, therefore, underestimate the effect of the management measures in reducing F. Furthermore, the results of the 2001 NMFS fall trawl survey indicate that the NFMA component of the stock is no longer overfished and that the SFMA stock biomass is at its highest level since 1986.

NMFS implements this emergency rule to amend temporarily the F criteria in the FMP to be consistent with those recommended by SAW 34. Amendment 2 to the FMP, which is currently under development by the Councils, will permanently amend these F criteria and establish a revised stock rebuilding program using the best scientific information available. Because the measures proposed in Framework 1 were found to be consistent with the F criteria recommended by SAW 34, this temporary revision to the F criteria contained in the FMP provides a clear basis for implementing the management measures proposed in Framework 1. Therefore, this action also enacts the management measures proposed in Framework 1, which are described in the preamble to this emergency rule. These measures achieve the FMP objective of ending overfishing in 2002 since setting the target TACs for the 2002 fishing year based on 2000 landings is consistent with the amended F threshold of F=0.2. Moreover, with stock survey indices showing increasing biomass, F should decrease further if monkfish catch remains stable. To achieve the target TACs recommended for Framework 1, the Councils and NMFS considered combinations of trip limits and DAS. The combination of restrictive trip limits and 40 DAS to keep landings at the 2000 level was selected by the Councils over other (higher) trip limits and a reduced number of DAS based on industry testimony favoring the maintenance of the 40 DAS.

[1] The mean at which monkfish is retained by the fishing gear.

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of Commerce to implement emergency regulations to address an emergency if the Secretary finds that an emergency exists. These emergency regulations may remain in effect for no more than 180 calendar days after the date of publication in the **Federal Register**, with a possible 180–day extension, provided the public has an opportunity to comment on the measures.

The restrictive Year 4 default measures currently required by the FMP became effective on May 1, 2002. These default measures are expected to have a significant negative economic impact on monkfish vessels and monkfish-dependent communities. In addition, because monkfish are often caught incidentally when vessels target other species, the default measures are likely to cause wasteful bycatch of monkfish in other directed fisheries as a result of reduced incidental trip limits. Furthermore, the results of SAW 34 and the 2001 NMFS fall trawl survey indicate that the restrictive Year 4 default measures are not necessary to eliminate overfishing.

Implementing this action through section 305(c) emergency authority is justifiable because the need to disapprove Framework 1 and immediately amend the FMP to make it consistent with the best scientific information available became discoverable only after NMFS had the time to fully evaluate the framework action after the public comment period had ended. As discussed above, the disapproval of Framework 1 is based on the fact that the framework measures, which are based on the best available scientific information on the monkfish stock, are inconsistent with the F criteria in the FMP. The need for a formal change to the FMP to incorporate the new F criteria was not clearly apparent earlier, given the newness of the scientific information and the extremely compressed timeframe for considering public comments and implementing the framework before the default measures became operative. Moreover, it would not have been possible to incorporate the new scientific information into the FMP through Framework 1 to avoid the default measures because the scientific information necessary to justify the change was not available in time. Disapproval of Framework 1 means that the default measures, which are no longer considered necessary in light of the best scientific information available, must remain in place until the newest science is incorporated into the FMP. To delay the incorporation of the newest science and implementation of the action necessary to avoid the default measures would result in substantial, unwarranted and unnecessary economic harm to the industry and would likely cause wasteful bycatch of monkfish in other fisheries. Because NMFS is constrained to only approve or disapprove a framework action, the only available way to implement this action, without further delay, is through the Magnuson-Stevens Act section 305(c) emergency authority.

Implementing this action through the section 305(c) emergency authority of the Magnuson-Stevens Act is fully consistent with NMFS' Policy Guidelines for the Use of Emergency Rules (Emergency Guidelines) found at 62 FR 44421, *et seq.* (August 21, 1997). The Emergency Guidelines specify ''emergency criteria'' and ''emergency justification'' for determining the appropriateness of section 305 (c) rulemaking. Under the ''emergency criteria'' guidelines, an emergency exists in a situation that: (1) Results from recent, unforeseen events or recently discovered circumstances; (2) presents serious conservation or management problems in the fishery; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

As more fully discussed above and in the EA accompanying this action, this emergency action meets all of these criteria. First, the need for the action results from a ''recently discovered circumstance'' created by the need to disapprove Framework 1. Second, to allow the default measures to remain in place creates serious management problems in that fishers are subject to substantial, unwarranted and unnecessary economic harm if they are not allowed to retain more than an incidental catch of monkfish. It also creates serious conservation problems in that the default measures are likely to cause wasteful bycatch of monkfish in other fisheries. Third, the immediate benefits of relieving the substantial economic harm on the fishers outweigh the value of additional public comment and deliberative consideration, particularly because there has been prior notice and comment on the measures to be implemented in the context of receiving comments on a proposed framework action.

For these same reasons, this emergency action is consistent with the ''emergency justification'' guidelines which state that an emergency action is justified:

> If the time it would take to complete notice-and-comment rulemaking would result in substantial damage or loss to a living marine resource, habitat, fishery, industry participants or communities, or substantial adverse effect to the public health, emergency action might be justified under one or more of the following situations:
>
> (1) Ecological (A) to prevent overfishing as defined in an FMP, or as defined by the Secretary in the absence of an FMP, or (B) to prevent other serious damage to the fishery resource or habitat; or,
>
> (2) Economic to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone; or,
>
> (3) Social to prevent significant community impacts or conflict between user groups; or,
>
> (4) Public health to prevent significant adverse effects to health of participants in a fishery or to the consumers of seafood products (62 FR 44421).

This emergency action clearly qualifies under the ''Economic'' situation in that it is intended to relieve unnecessary economic loss to fishers that otherwise would not be able to fish for monkfish under the default measures. It also preserves a significant economic opportunity for those fishers that rely on the monkfish fishery for their livelihood as more fully discussed above and in the EA. In addition, this emergency action addresses the ''Social'' situation by lessening impacts on fishers in communities more dependent on monkfish and the ''Ecological'' situation by minimizing wasteful bycatch of monkfish in other fisheries.

Classification

For these reasons, the Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive the requirement to provide prior notice and the opportunity for public comment on the temporary amendment to F thresholds and F targets in the FMP, pursuant to authority set forth at U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. This will prevent unnecessary economic harm and biological waste by enacting a temporary suspension of the restrictive Year 4 default management measures and implementing alternative measures consistent with the measures proposed in Framework 1. These reasons are more fully explained in the justification for implementing this emergency action pursuant to section 305(c) of the Magnuson-Stevens Act. It is further noted that the management

measures contained in this emergency rule received prior notice and public comment through the Council's framework process and the publication of a proposed rule for Framework 1. The AA is also waiving the 30 day delay in effective date under 5 U.S.C. 553(d)(1), as this rule relieves a restriction.

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

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment. However, the management measures contained in this emergency rule received prior notice and public comment through the Councils' framework process and the publication of a proposed rule, accompanied by an Initial Regulatory Flexibility Analysis, for Framework 1. A Final Regulatory Flexibility Analysis was prepared for the draft final rule for Framework 1.

A formal section 7 consultation under the Endangered Species Act was initiated for Framework 1. Because the measures contained in this emergency rule are the same as those proposed in Framework 1, the Biological Opinion (BO) prepared as part of that consultation is applicable to this action. In the BO for Framework 1 dated May 14, 2002, the AA determined that fishing activities conducted under the measures contained in Framework 1 are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

The Regional Administrator has determined that fishing activities conducted under this emergency rule will not have an adverse impact on marine mammals.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 16, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.92, paragraph (b)(1) is suspended and paragraph (b)(9) is added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(9) *Limited access monkfish permit holders.* For fishing year 2002, all limited access monkfish permit holders shall be allocated 40 monkfish DAS. Multispecies and scallop limited access permit holders who also qualify for a limited access monkfish permit shall be allocated up to 40 monkfish DAS, depending on whether they have sufficient multispecies and/or scallop DAS to use concurrently with their monkfish DAS, as required by paragraph (b)(2) of this section.

3. In § 648.94, paragraphs (b)(1) through (b)(7) and (c)(2) are suspended, and paragraphs (b)(8) through (b)(11), and (c)(7) are added to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(8) *Vessels fishing under the monkfish DAS program in the SFMA.*—(i) *Category A and C vessels.* Category A and C vessels fishing under the monkfish DAS program in the SFMA may land up to 550 lb (249 kg) tail-weight or 1,826 lb (828 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(ii) *Category B and D vessels.* Category B and D vessels fishing under the monkfish DAS program in the SFMA may land up to 450 lb (204 kg) tail-weight or 1,494 lb (678 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(iii) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(8)(ii) and (iii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(9) *Category C and D vessels fishing during a multispecies DAS.*—(i) *NFMA.* There is no monkfish trip limit for a Category C or D vessel that is fishing under a multispecies DAS exclusively in the NFMA.

(ii) *SFMA.* If any portion of a trip is fished only under a multispecies DAS, and not under a monkfish DAS, in the SFMA, the vessel may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight if gear other than trawl gear is used during the trip.

(10) *Category C and D vessels fishing under the scallop DAS program.* A Category C or D vessel fishing under a scallop DAS with a dredge on board, or under a net exemption provision as specified in § 648.51(f), may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(11) *Category C and D scallop vessels declared into the monkfish DAS program without a dredge on board.* Category C and D vessels that have declared into the monkfish DAS program and that do not fish with or have on board a dredge are subject to the same landing limits as specified in paragraph (b)(9) of this section. Such vessels are also subject to provisions applicable to Category A and B vessels fishing only under a monkfish DAS, consistent with the provisions of this part.

(c) * * *

(7) *Scallop dredge vessels fishing under a scallop DAS.* A scallop dredge vessel issued a monkfish incidental catch permit and fishing under a scallop DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

* * * * *

[FR Doc. 02–12774 Filed 5–17–02; 10:37 am]

BILLING CODE 3510–22–S