

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947-4120.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: AVAPCD 701, ICAPCD 101, and MBUAPCD 415 and 433. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 12, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 03-5325 Filed 3-6-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[IA 167-1167; FRL-7458-7]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Iowa State Implementation Plan (SIP) and Operating Permits Programs. This revision pertains primarily to the state's construction and operating permits program. This revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program rule revision.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial

revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received in writing by April 7, 2003.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551-7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: February 20, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03-5309 Filed 3-6-03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030225045-3045-01; I.D. 020603A]

RIN 0648-AQ29

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Framework Adjustment 2

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 2 to the Monkfish Fishery Management Plan (FMP) developed by the New England and Mid-Atlantic Fishery Management Councils (Councils). Pursuant to the

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP, this proposed rule would modify the monkfish overfishing definition reference points and optimum yield (OY) target control rule to be consistent with the most recent stock assessment and other scientific information. This rule also proposes an expedited process for setting annual target total allowable catch (TAC) and a method for adjusting monkfish trip limits and days-at-sea (DAS) allocations to achieve the annual target TACs. Based on this method, this proposed rule would establish a target TAC and corresponding trip limits and DAS allocations for fishing year (FY) 2003. In addition, this proposed rule would eliminate the default measures adopted in the original FMP that would result in elimination of the directed monkfish fishery and reduce incidental catch limits. Finally, this proposed rule would clarify the regulations pertaining to the monkfish area declaration requirements by specifying that vessels intending to fish under either a monkfish, multispecies, or scallop DAS, under the less restrictive measures of the Northern Fishery Management Area (NFMA), declare their intent to fish in the NFMA for a minimum of 30 days.

DATES: Public comments must be received on or before March 24, 2003.

ADDRESSES: Comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator (RA), Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on Monkfish Framework 2." 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 Framework Adjustment 2 to the FMP, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) are available upon request from Paul Howard, Executive Director, New England Fishery Management Council (NEFMC), 50 Water Street, Newburyport, MA, 01950. Copies of the Framework 2 EA/RIR/IRFA are also available online at www.nefmc.org under "Plans and Reports."

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, (978) 281-9103, fax (978) 281-9135, e-mail Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION: The monkfish fishery is jointly managed by the Councils. The FMP contains default measures that would eliminate the

directed monkfish fishery by allocating zero monkfish DAS. These measures were scheduled to take effect during Year 4 (May 1, 2002) of the FMP's 10-year rebuilding schedule, but were delayed until May 1, 2003, as a result of the implementation of an emergency interim rule (67 FR 35928; May 22, 2002) and its extension (67 FR 67568; November 6, 2002). The emergency interim rule temporarily amended the fishing mortality rate (F) criteria in the FMP to be consistent with the most recent stock assessment. The emergency rule also implemented the measures contained in Framework Adjustment 1 to the FMP (which was disapproved by NMFS in conjunction with the implementation of the emergency rule) since these measures were deemed to be consistent with the revised F criteria.

The purpose of the proposed action is to continue the 10-year stock rebuilding program started in 1999 under the original FMP, consistent with updated scientific information. As noted above, the FMP contains default measures that, unless eliminated or delayed, will end the directed fishery (no allocation of monkfish DAS) and reduce several of the incidental catch limits starting May 1, 2003. The default measures were developed in the original FMP based on scientific analysis and projections done in 1997. More recent analyses and stock assessments have indicated that the scientific basis for the default measures is no longer valid, and the measures are not appropriate. Furthermore, the most recent stock assessment (SAW 34; January 2002) has invalidated the lower F reference points contained in the FMP, and suggested alternative reference points for the monkfish overfishing definition and control rules. In addition to revising the overfishing definitions in the FMP to make them consistent with the best available science and the provisions of the Magnuson-Stevens Act, this action proposes to establish an expedited process for setting annual target TACs, and the necessary trip limits and/or DAS allocations to meet such target TACs. Furthermore, this proposed rule would establish target TACs and corresponding trip limits for FY 2003 utilizing the proposed method.

Monkfish Overfishing Definition Reference Points

The threshold fishing mortality rate ($F_{\text{threshold}}$) is the criterion by which the overfishing status is determined. Framework 2 would revise the $F_{\text{threshold}}$ reference point by setting $F_{\text{threshold}}$ equal to $F_{\text{max}}=0.2$, as recommended by the 34th Stock Assessment Workshop. F_{max} is the proxy for the fishing mortality rate

that will achieve maximum sustainable yield (MSY) from a rebuilt stock.

The minimum biomass threshold ($B_{\text{threshold}}$) is the criterion by which a stock is determined to be overfished. The biomass target (B_{target}) is a proxy for the expected biomass at MSY (B_{msy}). The National Standard Guidelines prescribe that $B_{\text{threshold}}$ be set at whichever of the following is greater: At one-half the B_{target} , or the minimum stock size at which rebuilding to B_{target} would be expected to occur within 10 years, if the stock were exploited at $F_{\text{threshold}}$. The existing $B_{\text{threshold}}$ s in the FMP were established based on the 33rd percentile of NMFS' fall trawl survey biomass index values for the years 1963–1994; $B_{\text{threshold}} = 1.46$ kg/tow for the NFMA and $B_{\text{threshold}} = 0.75$ kg/tow for the Southern Fishery Management Area (SFMA). At the time the FMP was implemented, the Councils believed that this was an acceptable proxy for a risk adverse $B_{\text{threshold}}$. Language in the FMP, however, indicates that it is unclear how this $B_{\text{threshold}}$ relates to rebuilding because of the inability to model monkfish stock dynamics and predict rebuilding potential due to a lack of biological data on the monkfish resource. Although a recent cooperative industry survey provided valuable biological information on the monkfish resource, there continues to be a lack of sufficient information necessary to conduct reliable projections for monkfish rebuilding, or to produce a reliable estimate of F. As a result, it is currently not possible for NMFS to determine the minimum stock size at which rebuilding to B_{target} would be expected to occur within 10 years if the stock were exploited at $F_{\text{threshold}}$. Because a $B_{\text{threshold}}$ of one-half the B_{target} is consistent with National Standard 1, and because there are no other suitable proxies for $B_{\text{threshold}}$ given the data-poor situation, the proposed action would revise the $B_{\text{threshold}}$ values contained in the FMP to be equivalent to one-half the B_{target} established for each management area. This would establish a $B_{\text{threshold}} = 1.25$ for the NFMA, and $B_{\text{threshold}} = 0.93$ for the SFMA. Under the proposed action, the B_{targets} established in the FMP would remain unchanged.

The results of the 2002 NMFS fall trawl survey indicate that the 3-year average biomass index is 2.23 kg/tow for the NFMA and 0.813 kg/tow for the SFMA. Applying the new $B_{\text{threshold}}$ criteria that would be established by this rule, the stock in the NFMA remains not overfished. However, the stock in the SFMA, which is currently considered not overfished, would be considered overfished under the proposed revision.

Setting Annual Target TACs and Associated Management Measures

Framework 2 would require the Monkfish Monitoring Committee (MFMC) to submit to the Council and Regional Administrator the target TACs for the upcoming year by December 1 based on a formulaic index- and landings-based method. This method would compare the current 3-year average biomass index (observed biomass index) values to annual biomass index targets, which are based on 10 equal increments between the 1999 biomass index (the start of the rebuilding program) and the 2009 biomass index target (B_{target}), a proxy for the monkfish biomass level at MSY. Annual target TACs would be set based on the ratio of the observed biomass index to the annual index target applied to the monkfish landings for the previous fishing year. Once the annual target TACs are established and submitted to the RA, the RA would adjust trip limits and/or DAS, if necessary, through rulemaking consistent with the Administrative Procedures Act (APA) based on the methodology established in this framework. If the TAC resulting from the application of the TAC setting procedures described herein does not require a change to existing management measures, then the RA would not be required to take any regulatory action under the procedures established in Framework 2.

The MFMC is currently required to meet on or before November 15 each year to review the status of the monkfish resource and develop TACs for the upcoming fishing year. If the results of the most recent NMFS fall trawl survey are available at that time, the MFMC would incorporate these results into the formulaic method as described in this framework to establish target TACs for the upcoming fishing year.

Under the target TAC setting method contained in Framework 2, if the observed biomass index is below the annual index target, the target TAC would be set proportionally below the previous year's landings. If the observed biomass index is above the annual index target, the target TAC would be increased from the previous year's landings by $\frac{1}{2}$ of the ratio of the biomass index to the index target, with certain limitations as described below. In cases where F can be determined, the annual target TAC would always be set at a value that would not exceed $F_{\text{threshold}}$ ($F=0.2$). For example, if F for the previous fishing year exceeded $F_{\text{threshold}}$, but a reduction in the target TAC is not required under the index-based method,

the target TAC would be reduced proportionally from the previous year's landings to end overfishing. When F cannot be determined and the observed biomass index is above the annual index target, the target TAC for the previous year would be increased by the method described above, but not by more than 20 percent of the previous year's landings.

Once the stock in a management area is rebuilt (the observed biomass index is at or above B_{target}), the target TAC would be adjusted based on the ratio of current F to $F_{\text{threshold}}$, allowing for an increase in the target TAC if F is below $F_{\text{threshold}}$. This would set the OY target reference point at $F_{\text{threshold}}$. However, if F cannot be determined and the observed biomass index is above B_{target} , the target TAC would be set at no more than 20 percent above the previous year's landings.

In the situation where landings decline from the previous fishing year and the observed biomass index is above the annual index target, the MFMC would review the circumstances surrounding the landings decline and recommend to the Councils a target TAC equivalent to either the previous year's landings or target TAC. The Councils, after considering the MFMC's recommendation, would then recommend a target TAC to the RA regarding whether the target TAC should be set at the previous year's landings or target TAC. If the RA concurs with this recommendation, the target TAC and associated trip limits would be promulgated through rulemaking and consistent with the requirements of the APA. Otherwise, the RA would notify the Councils in writing of his or her reasons for non-concurrence.

The intent of the Councils in establishing a formulaic method for setting annual target TACs, described above, was to enable the RA to set future TACs and associated management measures outside of the framework adjustment process established in the FMP. In this proposed rule, NMFS is clarifying that the expedited process for setting annual TACs contained in the Framework 2 document is to be done through the rulemaking process specified under the APA.

The Framework 2 document analyzes a range of target TAC alternatives for FY 2004. The intent of this analysis is to facilitate the expedited process for annual adjustments and to provide the public with ample notice of the possible impacts of such adjustments. The expedited annual adjustment process to be established in this framework would not preclude the Councils from

initiating a framework adjustment at anytime to implement other measures deemed necessary to meet the objectives of the FMP.

FY 2003 TACs and Possession Limits

For FY 2003, the TACs under the proposed action would be 10,211 mt in the SFMA and 17,708 mt in the NFMA. As a result, trip limits for monkfish limited access vessels in the SFMA would be increased from FY 2002 (May 1, 2002 – April 30, 2003) levels (550 lb (249.5 kg) tail weight per DAS for Category A and C vessels, and 450 lb (204.1 kg) tail weight per DAS for Category B and D vessels), to 1,250 lb (567 kg) tail weight per DAS for Category A and C vessels, and 1,000 lb (453.6 kg) tail weight per DAS for Category B and D vessels. In the NFMA, there is currently no trip limit for monkfish limited access vessels while fishing under either a monkfish or Northeast (NE) multispecies DAS, and no change is proposed. However, monkfish open-access Category E vessels fishing exclusively in the NFMA on a NE multispecies DAS would have their monkfish incidental catch limits increased from 300 lb (136.1 kg) tail weight per DAS or 25 percent of the total weight of fish on board to the lesser of 400 lb (181.4 kg) tail weight per DAS or 50 percent of total weight of fish on board.

Revision to the Area Declaration Regulations

Regulations implementing the FMP (64 FR 54732; October 7, 1999) specify that a vessel intending to fish for or catch monkfish under a monkfish DAS only in the NFMA must declare into the NFMA for a minimum of 30 days in order to fish under the less restrictive size and trip limits of this management area. However, the FMP also requires vessels fishing under a multispecies or scallop DAS to declare into the NFMA in order to fish under the less restrictive measures of this area. Because NMFS inadvertently referenced only limited access monkfish DAS vessels in the regulations implementing the FMP, Framework 2 proposes to correct the area declaration provision by requiring vessels with limited access multispecies and scallop DAS permits, in addition to vessels possessing limited access monkfish DAS permits, to declare into the NFMA for a minimum of 30 days in order to fish under the less restrictive size and trip limits of this management area.

Revisions to Prohibitions

Since they are ambiguous and do not contain the appropriate cross-references

to the monkfish regulations specified under 50 CFR Part 648 Subpart F, this action also proposes to clarify the monkfish prohibitions found at § 648.14(y).

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 because it does not have an annual effect on the economy of 100 million dollars or more, or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. The proposed action also does not raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The Council prepared an initial regulatory flexibility analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA prepared for this action by the NEFMC follows NMFS' "Guidelines for Economic Analysis of Fishery Management Actions" (NMFS' guidelines). A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY**. A summary of the analysis follows:

There are approximately 714 limited access monkfish permit holders, of which about 85 percent record some monkfish activity. Of the approximately 1,900 open-access Category E permits, only about 25 percent have recorded landing monkfish. Vessels range in size from less than 30 ft (9.14 m) to over 90 ft (27.43 m), with the median being less than 50 ft (15.24 m) in overall length. Most of the inactive vessels (those not landing monkfish or not landing any species) are in the smaller size classes, while 70 percent of the limited access vessels over 50 ft (15.24 m) have recorded monkfish landings. In achieving OY from the fishery on an annual basis while rebuilding the resource to levels that will sustain MSY, the proposed action strikes a reasonable balance between biological requirements and uncertainties, and the financial requirements of small entities.

NMFS' guidelines specify two criteria to be used for evaluating whether a proposed action is significant: Disproportionality and profitability. Disproportionality relates to the effect on small entities compared to large entities. Since all entities engaged in the fishery fall under the Small Business

Administration approved definition of "small entity," this evaluation standard is not relevant to the fishery. According to the analysis of the impact on vessels in the SFMA, relative to performance during calendar years 1998–2000, net return on monkfish-only trips would improve by 23 percent for the median and range from no change to an improvement of 78 percent at the proposed FY 2003 quota level. Given these levels of expected change in profitability, the proposed trip limits may have a significant positive impact on limited access monkfish vessels that fish in the SFMA. At other quota levels, median vessel performance would be reduced by 63 percent at a 5,000–mt quota, but would increase by 29 percent at a 13,000–mt quota. In either of these two scenarios, the change in profitability would be significant; negative for the former, and positive for the latter.

In the NFMA, the only change in management measures would be an increase in the incidental catch limit for open access Category E monkfish vessels. During FY 2001 (May 1, 2001 – April 30, 2002), 255 Category E vessels caught monkfish in the NFMA. Average monkfish catch by these vessels (62 lb (28.1 kg) per NE multispecies DAS) is well below the current and proposed incidental catch limits. Therefore, in terms of improvements to participating vessels' annual profit, the proposed change is not likely to have a significant impact. While the current trip limit does not constrain the majority of the 255 Category E vessels catching monkfish in the NFMA, the proposed increase could allow those vessels that are constrained by the current trip limit to increase their monkfish landings by as much as 33 percent without jeopardizing the stock rebuilding program.

NMFS' guidelines state that "a rule may be determined to affect a substantial number of small entities if the rule is controversial, impacts more than just a few entities, or affects the structure of the regulated industry even though only a small number of entities may be impacted." The proposed action may affect a substantial number of small entities because it will impact approximately 700 limited access monkfish permit holders, although not in an adverse way, by means of an increase to the trip limits for the SFMA. An analysis of projected change in fishing performance under the proposed TACs and trip limits for FY 2003, as compared to FY 2002, indicates that the median vessel will realize a 23-percent increase in net returns on monkfish-only trips. According to this analysis, the change in net returns resulting from

the proposed trip limit increase ranged from no change to an improvement of 78 percent. A vessel would realize no change in net revenues under the proposed trip limit increase if the vessel was not constrained by the 2002 trip limits; in other words, the vessel did not fish at a level exceeding the trip limits established for FY 2002. Under future TACs that could range from 5,000 mt to 13,000 mt, the median vessel would realize gross revenue impacts ranging from a loss of 49 percent to a gain of 17 percent in net income. In the NFMA, approximately 255 vessels out of approximately 1,500 limited access multispecies permit holders landed monkfish under the open-access Category E (incidental catch) permit. These vessels will mostly be unaffected by the proposed incidental catch limit increase since they land, on average, only about 20 percent of the current limit.

Combining the two evaluation criteria, the proposed regulations would likely have a considerable positive impact on a substantial number of vessels that participate in the SFMA on monkfish-only DAS. The incidental catch trip limit change in the NFMA would impact a substantial number of participating small entities, but the overall impact on vessel profitability is not expected to be significant.

A copy of this analysis is available from the NEFMC (see **ADDRESSES**).

This proposed rule does not duplicate, overlap or conflict with other Federal rules, and does not contain new reporting or recordkeeping requirements. However this action makes a correction to the regulatory language referencing area declaration procedures. This collection-of-information requirement that is subject to the Paperwork Reduction Act (PRA) has previously been approved by OMB under control number 0648–0202.

Public reporting burden for this collection of information is estimated to average 3 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be

subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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 § 648.14, paragraphs (y) introductory text, (y)(1), (y)(4), (y)(6), (y)(9) through (y)(11), (y)(13), and (y)(17) through (y)(21) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(y) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel that engages in fishing for monkfish to do any of the following:

(1) Fish for, possess, retain or land monkfish, unless:

(i) The monkfish are being fished for, or were harvested, in or from the EEZ by a vessel issued a valid monkfish permit under § 648.4(a)(9); or

(ii) The monkfish were harvested by a vessel not issued a Federal monkfish permit that fishes for or possesses monkfish exclusively in state waters; or

(iii) The monkfish were harvested in or from the EEZ by a vessel not issued a Federal monkfish permit that engaged in recreational fishing.

* * * * *

(4) Operate or act as an operator of a vessel fishing for, possessing, retaining, or landing monkfish in or from the EEZ without having been issued and possessing a valid operator permit pursuant to § 648.5, and this permit is onboard the vessel.

* * * * *

(6) Violate any provision of the monkfish incidental catch permit restrictions as provided in §§ 648.4(a)(9)(ii) or 648.94(c).

* * * * *

(9) Fail to comply with the monkfish size limit restrictions of § 648.93 when

issued a valid monkfish permit under § 648.4(a)(9).

(10) Fail to comply with the monkfish possession limits and landing restrictions, including liver landing restrictions, specified under § 648.94 when issued a valid monkfish permit under § 648.4(a)(9).

(11) Fail to comply with the monkfish DAS provisions specified at § 648.92 when issued a valid limited access monkfish permit, and fishing for, possessing, or landing monkfish in excess of the incidental catch limits specified at § 648.94 (c).

(13) Combine, transfer, or consolidate monkfish DAS allocations.

(17) If the vessel has been issued a valid limited access monkfish permit, and fishes under a monkfish DAS, fail to comply with gillnet requirements and restrictions specified in § 648.92(b)(8).

(18) Fail to produce gillnet tags when requested by an authorized officer.

(19) Tagging a gillnet with or otherwise using or possessing a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel, or using or possessing a false gillnet tag.

(20) Selling, transferring, or giving away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

(21) Fail to comply with the area declaration requirements specified at §§ 648.93(b)(2) and 648.94(f) when fishing under a scallop, multispecies or monkfish DAS exclusively in the NFMA under the less restrictive monkfish size and possession limits of that area.

3. In § 648.92, paragraph (b)(1) is revised to read as follows:

§ 648.92 Effort control program for monkfish limited access vessels.

(b) *Limited access monkfish permit holders.* All limited access monkfish permit holders shall be allocated 40 monkfish DAS for each fishing year, unless modified according to the provisions specified at § 648.96(b)(3). Limited access multispecies and limited access scallop permit holders who also possess a valid limited access monkfish permit must use a multispecies or scallop DAS concurrently with their monkfish DAS, except as provided in paragraph (b)(2) of this section.

4. In § 648.93, the introductory heading for paragraph (a), and paragraphs (a)(1) and (b) are revised to read as follows:

§ 648.93 Monkfish minimum fish sizes.

(a) *General provisions.* (1) All monkfish caught by vessels issued a valid Federal monkfish permit must meet the minimum fish size requirements established in this section.

(b) *Minimum fish sizes.* (1) The minimum fish size for vessels fishing in the SFMA, or for vessels not declared into the NFMA as specified in paragraph (b)(2) of this section, is 21 inches (53.3 cm) total length/14 inches (35.6 cm) tail length.

(2) *Vessels fishing exclusively in the NFMA.* The minimum fish size for vessels fishing exclusively in the NFMA is 17 inches (43.2 cm) total length/11 inches (27.9 cm) tail length. In order for this size limit to be applicable, a vessel intending to fish for monkfish under a scallop, multispecies, or monkfish DAS exclusively in the NFMA must declare into the NFMA for a period of not less than 30 days pursuant to the provisions specified at § 648.94(f). A vessel that has not declared into the NFMA under this paragraph shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA providing that it complies with the transiting and gear storage provisions described in § 648.94(e) and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

5. In § 648.94, paragraph (b)(7) is removed and reserved; and paragraphs (b)(1), (b)(2), introductory heading of paragraph (b)(3), (b)(4) through (b)(6), (c)(1)(i), (c)(2), (c)(3)(i) and (f) are revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

(1) *Vessels fishing under the monkfish DAS program in the NFMA.* There is no monkfish trip limit for vessels issued a limited access Category A, B, C, or D permit that are fishing under a monkfish DAS exclusively in the NFMA.

(2) *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 1,250 lb (567 kg) tail-weight or 4,150 lb (1,882 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32).

(ii) *Category B and D vessels.* Category B and D vessels fishing under the

monkfish DAS program in the SFMA may land up to 1,000 lb (454 kg) tail-weight or 3,320 lb (1,506 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32).

(iii) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(2)(i) and (ii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(3) *Category C and D vessels fishing under the multispecies DAS program.*

(4) *Category C and D vessels fishing under the scallop DAS program.* A Category C or D vessel 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 for tail-weight to whole weight of 3.32). All monkfish permitted vessels are prohibited from fishing for, landing, or possessing monkfish while in possession of dredge gear unless fishing under a scallop DAS.

(5) *Category C and D scallop vessels declared into the monkfish DAS program without a dredge on board, or not under the net exemption provision.* Category C and D vessels that have declared into the monkfish DAS program and that do not fish with or have a dredge on board, or are not fishing with a net under the net exemption provision specified in § 648.51(f), are subject to the same landing limits as specified in paragraphs (b)(1) and (b)(2) 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.

(6) *Vessels not fishing under a multispecies, scallop or monkfish DAS.* The possession limits for all limited access monkfish vessels when not fishing under a multispecies, scallop, or monkfish DAS are the same as the possession limits for a vessel issued a monkfish incidental catch permit specified under paragraph (c)(3) of this section.

(c) *Multispecies DAS.*

(i) *NFMA.* Vessels issued a monkfish incidental catch permit fishing under a multispecies DAS exclusively in the NFMA may land up to 400 lb (181 kg) tail weight or 1,328 lb (602 kg) whole

weight of monkfish per DAS, or 50 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

(2) *Scallop dredge vessels fishing under a scallop DAS.* A scallop dredge vessel issued a monkfish incidental catch permit 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).

(3) * * *

(i) *Vessels fishing with large mesh.* A vessel issued a valid monkfish incidental catch permit and fishing in the GOM, GB, SNE, or MA RMAs with mesh no smaller than specified at § 648.80(a)(3)(i), (a)(4)(i), (b)(2)(i), and § 648.104(a)(1), respectively, while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

(f) *Area declaration requirement for vessels fishing exclusively in the NFMA.* Vessels fishing under a multispecies,

scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish for monkfish exclusively in the NFMA and declare into the NFMA for a period of not less than 30 days by obtaining a letter of authorization from the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA providing that it complies with the transiting and gear storage provisions described in § 648.94(e) and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

* * * * *

6. In § 648.96, the section heading and paragraphs (a), (b) and (c) are revised to read as follows:

§ 648.96 Monkfish annual adjustment process and framework specifications.

(a) *General.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year in accordance with § 648.96(b)(1), and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, or other measures necessary to achieve the Monkfish FMP's goals and objectives. The MFMC shall review available data pertaining to discards and

landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

(b) *Annual adjustment procedures—*
 (1) *Setting annual target TACs.* (i) The MFMC shall submit to the Councils and Regional Administrator the target monkfish TACs for the upcoming fishing year by December 1 based on the control rule formula described in paragraph (b)(1)(ii) of this section. The Regional Administrator shall then promulgate any changes to existing management measures, pursuant to the methods specified in paragraphs (b)(2) and (3) of this section, resulting from the updated target TAC through rulemaking consistent with the Administrative Procedures Act. If the annual target TAC generated through the control rule formula described in paragraph (b)(1)(ii) of this section does not require any changes to existing management measures, then no action is required by the Regional Administrator.

(ii) *Control rule method for setting annual targets TACs.* The current 3-year running average of the NMFS fall trawl survey index of monkfish biomass will be compared to the established annual biomass index target, and target annual TACs will be set in accordance with paragraphs (b)(1)(ii)(A) through (F) of this section. The annual biomass index targets established in Framework Adjustment 2 to the FMP are provided in the following table (kg/tow).

	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2007	FY 2008	FY 2009
NFMA	1.33	1.49	1.66	1.83	2.00	2.16	2.33	2.50
SFMA	0.88	1.02	1.15	1.29	1.43	1.57	1.71	1.85

(A) Unless the provisions of paragraphs (b)(1)(ii)(C) or (D) of this section apply, if the current 3-year running average of the NMFS fall trawl survey biomass index is below the annual index target, the target TAC for the subsequent fishing year will be set equivalent to the monkfish landings for the previous fishing year minus the percentage difference between the 3-year average biomass index and the annual index target.

(B) If the 3-year running average of the NMFS fall trawl survey biomass index is above the annual index target, and the current estimate of F is below $F_{\text{threshold}}=F_{\text{max}}=0.2$, the target TAC for the subsequent fishing year shall be set equivalent to the previous year's landings plus one-half the percentage difference between the 3-year average biomass index and the annual index

target, but not to exceed an amount calculated to generate an F in excess of $F_{\text{threshold}}$. If current F cannot be determined, the target TAC shall be set at not more than 20 percent above the previous year's landings.

(C) If the current estimate of F exceeds $F_{\text{threshold}}$, the target TAC shall be reduced proportionally to stop overfishing, even if a reduction is not called for based on biomass index status as described in paragraph (b)(1)(ii)(A) of this section. For example, if $F=0.24$, and $F_{\text{threshold}}=0.2$, then the target TAC shall be reduced to 20 percent below the previous year's landings.

(D) If the 3-year average biomass index is below the annual index target, and F is above $F_{\text{threshold}}$, the method (F-based or biomass index based) that shall result in the greater reduction from the previous year's landings will determine

the target TAC for the subsequent fishing year.

(E) If the observed index is above the 2009 index targets, the target TAC for the subsequent fishing year shall be based on the ratio of current F to $F=0.2$ applied to the previous year's landings. If current F cannot be determined, the target TAC shall be set at not more than 20 percent above previous year's landings.

(F) If landings decline from the previous year and the current 3-year average biomass index is above the annual index target, whether or not F can be determined, the MFMC shall include in its report, prepared under paragraph (a) of this section, after taking into account circumstances surrounding the landings decline, a recommendation to the Councils on whether the target TAC should be set at the previous year's

landings or previous year's target TAC. The Councils shall consider the MFMC recommendation, and then recommend to the Regional Administrator whether the target TAC should be set at the previous year's landings or previous year's target TAC. If such a recommendation is made, the Regional Administrator must decide whether to promulgate measures consistent with the recommendation as provided for in paragraph (b)(4) of this section.

(2) *Setting trip limits for the SFMA.* (i) Under the method described in paragraph (b)(1)(ii) of this section, if the SFMA target TAC is set at 8,000 mt or higher, the Regional Administrator shall adjust the trip limits according to the method described in paragraph (b)(2)(ii) of this section.

(ii) *Trip limit analysis procedures.* Trip limits shall be determined annually using information from the mandatory fishing vessel trip reports (FVTR). The 1999 fishing year shall be used as the baseline year for this analysis. The most recent fishing year for which there is complete FVTR information shall be utilized to establish the level of landings and fishing effort under current regulations. For example, the determination of trip limits for the 2004 fishing year would be based on the ratio of landings and effort obtained from the FVTRs for the 2002 fishing year, the most recent fishing year for which complete FVTR information would be available. Using the relationship between the fishing patterns for these two years, ratios shall be calculated for each permit category. These ratios shall be used to determine landings goals for each permit category based on the proposed TAC for the SFMA. A simulation process will then be used to estimate the landings per DAS for each permit category that would achieve the established landings goals.

(3) *Setting DAS allocations for the SFMA.* Under the method described in paragraph (b)(1)(ii) of this section, if the SFMA target TAC is set below 8,000 mt, the Regional Administrator shall set the trip limits as specified in paragraphs (b)(3)(i) and (ii) of this section, and adjust the DAS allocations according to the method described in paragraph (b)(3)(iii) of this section.

(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 for tail-weight to whole weight of 3.32).

(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 for tail-weight to whole weight of 3.32).

(iii) *DAS analysis.* This procedure involves setting a maximum DAS usage for all permit holders of 40 DAS; proportionally adjusting the landings to a given DAS value based on the trip limits specified under paragraphs (b)(3)(i) and (ii) of this section; and adjusting the landings according to the same methodology used in the trip limit analysis described in paragraph (b)(2)(ii) of this section.

(A) Limited access monkfish permit holders are allowed to carry over up to 10 DAS from the previous fishing year to the current fishing year. For this procedure, adjustments to DAS usage are made by first reducing the landings for all permit holders who used more than 40 DAS by the proportion of DAS exceeding 40, and then resetting the upperlimit of DAS usage to 40.

(B) The expected landings at the adjusted DAS are calculated by adding the landings of all permit holders who used less than the proposed DAS limit to the landings of those who used more than the proposed DAS limit, where landings are reduced by the proportion of the proposed DAS limit to the actual DAS used by vessels during the baseline fishing year, 1999.

(C) Landings are prorated between permit categories in the same manner used in the trip limit analysis procedures described under paragraph (b)(2)(iii) of this section.

(4) *Council TAC recommendations.* As described in paragraph (b)(1)(ii)(F) of this section, if the Councils recommend a target TAC to the Regional Administrator, and the Regional Administrator concurs with this recommendation, the Regional Administrator shall then promulgate the target TAC and associated management measures through rulemaking consistent with the APA. If the Regional Administrator does not concur with the Councils' recommendation, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(c) *Annual and in-season framework adjustments to management measures—*
(1) *Annual framework process.* (i) Based on their annual review, the MFMC may develop and recommend, in addition to the target TACs and management measures established under paragraph (b) of this section, options necessary to

achieve the Monkfish FMP's goals and objectives, which may include a preferred option. The MFMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MFMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MFMC may include any of the management measures in the Monkfish FMP, including, but not limited to: closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver to monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; and other frameworkable measures included in §§ 648.55 and 648.90.

(ii) The Councils shall review the options developed by the MFMC and other relevant information, consider public comment, and submit a recommendation to the Regional Administrator that meets the Monkfish FMP's objectives, consistent with other applicable law. The Councils' recommendation to the Regional Administrator shall include supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Councils. Management adjustments made to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(A) The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options developed by the MFMC. The oversight committee would review the options developed by the MFMC and any other relevant information, consider public comment, and make a recommendation to the Councils.

(B) If the Councils do not submit a recommendation that meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MFMC unless rejected by either Council, provided such option meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law. If either the NEFMC or MAFMC has rejected all options, then the Regional Administrator may select any measure that has not been rejected by both Councils.

(iii) If the Councils submit, on or before January 7 of each year, a recommendation to the Regional Administrator after one framework meeting, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the **Federal Register** as a proposed rule. The **Federal Register** notification of the proposed action shall provide a 30-day public comment period. The Councils may instead submit their recommendation on or before February 1 if they choose to follow the framework process outlined in paragraph (c)(3) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs that the Councils' recommendation meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action shall be published as a final rule in the **Federal Register**. If the Regional Administrator concurs that the recommendation meets the Monkfish FMP's goals and objectives, is consistent with other applicable law, and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year, fishing may continue. However, DAS used by a vessel on or after the start of a fishing year shall be counted against any DAS allocation the vessel ultimately receives for that year.

(iv) Following publication of a proposed rule and after receiving public comment, if the Regional Administrator concurs in the Councils' recommendation, a final rule will be published in the **Federal Register** prior to the start of the next fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the goals and objectives of the Monkfish FMP, the Regional Administrator may publish as a proposed rule one of the MFMC options reviewed and not rejected by either Council, provided the option meets the goals and objectives of the Monkfish FMP, and is consistent with other applicable law.

(2) *In-season action.* At any time, the Councils or the Joint Monkfish Oversight Committee (subject to the approval of the Councils' chairmen) may initiate action to add or adjust management measures if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP. Recommended adjustments to management measures must come from the categories specified under paragraph (c)(1)(i) of this section. In addition, the procedures for framework adjustments specified under paragraph (c)(3) of this section must be followed.

(3) *Framework adjustment procedures.* Framework adjustments shall require at least one initial meeting of the Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two Council meetings, one at each Council. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to the first of the two final Council meetings. Framework adjustments and amendments to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(i) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four factors and provide support and analysis for each factor considered:

(A) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(B) Whether there has been adequate notice and opportunity for participation

by the public and members of the affected industry in the development of the Councils' recommended management measures;

(C) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(D) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(ii) *Action by NMFS.* (A) If the Regional Administrator approves the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3)(i) of this section, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of the recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(B) If the Regional Administrator concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the **Federal Register**.

(C) If the Regional Administrator does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(iii) Adjustments for gear conflicts. The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(d) and (e).

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