

mathematics or special education rather than the subjects they currently teach and who agree to teach in a "high-need school" as defined in section 2304(d)(3) of the Act.

(ii) Those who agree to obtain certification to teach another subject or subjects and who agree to teach in a "high-need school" as defined in section 2304(d)(3) of the Act.

(iii) Those who agree to obtain certification to teach science, mathematics, or special education rather than the subjects they currently teach.

(iv) All others seeking assistance necessary to be deemed "highly qualified" by their State within the meaning of section 9101(23) of the Act.

(b) [Reserved]

(Authority: 20 U.S.C. 1221e-3, 3474, and 6672(c)(1))

[FR Doc. 05-861 Filed 1-13-05; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 041229366-4366-01; I.D. 122304D]

RIN 0648-AQ25

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Amendment 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 measures in Amendment 2 to the Monkfish Fishery Management Plan (FMP) developed jointly by the New England and Mid-Atlantic Fishery Management Councils (Councils).

Amendment 2 was developed to address essential fish habitat (EFH) and bycatch issues, and to revise the FMP to address several issues raised during the public scoping process. This proposed action includes the following programs and measures: A new limited access permit for qualified vessels fishing south of 38° 20' N. lat.; an offshore trawl fishery in the Southern Fishery Management Area (SFMA); a maximum disc diameter of 6-inches (15.2 cm) for trawl gear vessels fishing in the SFMA; closure of two deep-sea canyon areas to all gears when

fishing under the monkfish day-at-sea (DAS) program; establishment of a research DAS set-aside program; an exemption program for vessels fishing outside of the Exclusive Economic Zone (EEZ); adjustments to the incidental monkfish catch limits; a decrease in the minimum monkfish size in the SFMA; removal of the 20-day block requirement; revisions to the monkfish baseline provisions; and additions to the frameworkable measures. This intent of this action is to provide efficient management of the monkfish fishery and to meet conservation objectives.

**DATES:** Comments must be received by 5 p.m., February 14, 2005.

**ADDRESSES:** Written comments on the proposed rule may be submitted by any of the following methods:

- E-mail: E-mail comments may be submitted to [mnkamnd2@noaa.gov](mailto:mnkamnd2@noaa.gov). Include in the subject line the following "Comments on the Proposed Rule for Monkfish Amendment 2."
- Federal e-Rulemaking Portal: <http://www.regulations.gov>
- Mail: Comments submitted by mail 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 the Proposed Rule for Monkfish Amendment 2."
- Facsimile (fax): Comments submitted by fax should be faxed to (978) 281-9135.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

Copies of Amendment 2, its Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the Final Supplemental Environmental Impact Statement (FSEIS) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

**FOR FURTHER INFORMATION CONTACT:** Allison R. Ferreira, Fishery Policy Analyst, (978) 281-9103; fax (978) 281-9135; e-mail [allison.ferreira@noaa.gov](mailto:allison.ferreira@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Councils developed Amendment 2 to address a number of issues that

arose out of the implementation of the original FMP, as well as issues that were identified during public scoping. Issues arising from the original FMP include: The displacement of vessels from their established monkfish fisheries due to restrictive trip limits; unattainable permit qualification criteria for vessels in the southern end of the range of the fishery; discards (bycatch) of monkfish due to regulations (i.e., minimum size restrictions and incidental catch limits); and deficiencies in meeting Magnuson-Stevens Act requirements pertaining to protection of Essential Fish Habitat (EFH) in accordance with the Joint Stipulation and Order resulting from the legal challenge *American Oceans Campaign, et al. v. Daley*. Issues arising from public scoping include: Deficiencies in meeting Magnuson-Stevens Act requirements, including preventing overfishing and rebuilding overfished stocks; a need to improve monkfish data collection and research; the need to establish a North Atlantic Fisheries Organization (NAFO) exemption program for monkfish; multiple vessel baseline specifications for limited access monkfish vessels; a need to update environmental documents describing the impact of the FMP; and a need to reduce FMP complexity where possible.

A notice of availability of a Draft Supplemental Environmental Impact Statement (DSEIS), which analyzed the impacts of all of the measures under consideration in Amendment 2, was published on April 30, 2004 (69 FR 23571), with public comment accepted through July 28, 2004. Public hearings were held between June 15 and June 24, 2004, in six locations from Maine to North Carolina.

#### Proposed Measures

1. Modification of the Limited Access Permit Qualification Criteria  
Modification of the limited access monkfish permit qualification criteria is being proposed to address concerns raised by some vessel owners who believe that they were not adequately notified of the monkfish control date and/or because of confusion regarding the southern boundary of the monkfish management unit in the initial FMP.

Amendment 2 would provide a renewed opportunity for a non-limited access monkfish vessel to qualify for a new limited access monkfish permit if it could demonstrate that it had monkfish landed in the area south of 38° 00' N. lat. during the qualification period March 15 through June 15, for the years 1994 through 1998. Two permits would be available, depending on the amount of monkfish the vessel

landed during the qualification period. Qualifying monkfish landing levels for these permits (specified below) would be the same amounts that were required for the original monkfish limited access permits. Vessels that could demonstrate that they landed at least 50,000 lb (22,680 kg) tail-weight, or 166,000 lb (75,298 kg) whole-weight, of monkfish from the area south of 38° 00' N. lat. during the qualification period would qualify for a monkfish limited access Category G permit (these landing criteria correspond to the current Category A and C permits). Vessels that could demonstrate that they landed at least 7,500 lb (3,402 kg) tail-weight, or 24,900 lb (11,295 kg) whole-weight, of monkfish from the area south of 38° 00' N. lat. during the qualification period would qualify for a monkfish limited access Category H permit (these landing criteria correspond to the current Category B and D permits). Vessels would be prequalified for these permits based on landings information currently on file with NMFS. Vessels that have not prequalified for the Category G or H permits, or vessels that want to obtain a different permit than the one for which they qualified, would be required to submit written information documenting monkfish landings during the qualification period specified above. Landings would need to be documented through dealer weighout receipts or dealer reports submitted to NMFS or other NMFS-approved entity. An appeal process would be established, similar to the appeal process established for the original monkfish limited access program, to allow a vessel owner to appeal a denial of a Category G or H permit, if it is determined that the denial was based on incorrect information.

Vessels qualifying for a Category G or H permit would be restricted to fishing on a monkfish DAS south of 38° 20' N. lat. (the initial line was established at 38° 00' N. lat. but was revised to 38° 20' N. lat. in response to sea turtle protection measures). In addition, the landing limit for Category G vessels when fishing under a monkfish DAS would be the same as for Category A or C vessels. The landing limit for Category H vessels when fishing under a monkfish DAS would be the same as Category B or D vessels. The Councils did not address the issue of monkfish incidental catch limits when not fishing under a monkfish DAS for Category G and H vessels. Therefore, NMFS intends to keep the incidental catch limit for these vessels the same as the incidental catch limits for vessels not issued a

limited access monkfish permit (Category E vessels).

### 2. Offshore Fishery Program

Amendment 2 would establish an Offshore Fishery Program in the SFMA that would allow vessels to elect to fish under a monkfish trip limit of 1,600 lb (725.8 kg) tail-weight (or 5,312 lb (2,410 kg) whole-weight) when fishing in the Offshore Fishery Program Area, under specific conditions, regardless of the trip limit that would otherwise be applicable to that vessel. For a vessel electing to fish in this program, monkfish DAS would be pro-rated based on a trip limit ratio (the standard permit category trip limit applicable to non-program vessels fishing in the SFMA, divided by 1,600 lb (725.8 kg) (the trip limit specified for vessels fishing in the program)), multiplied by the monkfish DAS available to the vessel's permit category when fishing in the SFMA. For example, in fishing year 2004, when the trip limit and DAS for permit Category C were set at 550 lb (249.5 kg) tail-weight and 28 DAS, respectively, a permit Category C vessel would be provided 9.6 monkfish DAS if electing to fish under the Offshore Fishery Program (550 lb (249.5 kg)/1,600 lb (725.8 kg) x 28 DAS = 9.6 DAS).

Vessels electing to fish in this program would be required to fish under the program rules for the entire fishing year and would receive a separate monkfish permit category (Category F). For the 2005 fishing year, vessels would be allowed to change their current permit category to permit Category F within 45 days of the effective date of the final rule implementing Amendment 2, if approved, provided the vessel did not fish under a monkfish DAS during the 2005 fishing year.

A vessel electing to fish in this program would be allowed to fish its monkfish DAS only within the Offshore Fishery Program Area from October through April. In addition, vessels would be prohibited from fishing on a monkfish DAS outside the program area. Enrolled vessels would be required to have on board a vessel monitoring system (VMS) that is operational during the entire October through April season. Unless subject to VMS requirements under regulations specific to another FMP, vessels would be allowed to turn their VMS units off between May 1 and September 30 for a minimum of 30 days.

A vessel electing to fish in this program would be subject to the gear requirements applicable to monkfish permit Category A and B vessels (monkfish vessels that do not also possess a Northeast (NE) multispecies or

scallop limited access permit) when fishing under a monkfish DAS, i.e., vessels fishing with trawl gear must fish with a minimum mesh size of 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend. Monkfish Category C and D vessels that elect to fish in this program would still be required to use a NE multispecies or scallop DAS when fishing on a monkfish DAS. Any vessel not electing to fish under this program would still be allowed to fish in the Offshore Fishery Program Area under the rules and regulations applicable to non-program vessels.

Establishment of the Offshore Fishery Program would help restore the offshore monkfish fishery that has largely ceased to occur due to the small trip limits implemented under the initial FMP and the disapproval of the "running clock" measure that was proposed in the FMP, which would have provided vessels with the ability to account for any trip limit overages. This program is intended to provide flexibility to the fishing industry without impacting the mortality objectives of the FMP.

### 3. Closure of Oceanographer and Lydonia Canyons

Under this proposed rule, vessels fishing on a monkfish DAS would be prohibited from fishing in the offshore canyon areas known as Oceanographer and Lydonia Canyons, which contain deep-sea corals, regardless of gear used. This measure is being proposed to minimize, to the extent practicable, the adverse impact of monkfish fishing on EFH, especially due to the potential impacts associated with an expansion of the directed offshore monkfish fishery under the Offshore Fishery Program proposed in this rule.

Twenty-three federally managed species have been observed or collected in surveys within the two proposed closure areas, and many of them have EFH defined as hard substrates in depths greater than 200 m. In addition, the EFH designations for juvenile and/or adult life stages of six of these species (redfish, tilefish, and four species of skates) overlap with the two proposed area closures. EFH for all six of these species has been determined to be moderately or highly vulnerable to the effects of bottom trawls and minimally vulnerable to bottom gillnets. Deep-sea corals have not been identified as a component of EFH for any species in the NE region, although they are known to grow on hard substrates, which are included in the EFH descriptions for many of the federally managed species within the proposed closures. They are also known to be particularly vulnerable

to damage or loss by bottom trawls, and likely to be damaged or removed from the bottom by gillnet gear. Additionally, avoiding any direct adverse impacts of monkfish bottom trawl gear and gillnet gear for six species of fish, and any indirect adverse impacts on hard bottom substrates and species of emergent epifauna, including corals, that grow on those substrates within the boundaries of the two proposed closure areas, would minimize any adverse impacts resulting from the potentially expanding offshore monkfish fishery proposed under this amendment. These closures are also expected to help mitigate bycatch concerns.

#### 4. SFMA Roller Gear Restriction

Amendment 2 proposes to restrict the diameter of roller gear used on trawl net vessels when fishing in the SFMA. Under this proposed rule, the roller gear on all trawl vessels fishing under a monkfish DAS would be restricted to a maximum diameter of 6 inches (15.2 cm). This measure is being proposed to minimize, to the extent practicable, the adverse impact of trawl fishing in the SFMA on EFH. This measure is specific to the SFMA, since it would help ensure that trawl vessels, which are known to be able to better target monkfish successfully with smaller roller gear in the SFMA than in the Northern Fishery Management Area (NFMA), do not fish in areas of more complex bottom characteristics, including the offshore canyon areas.

#### 5. Cooperative Research Incentive Programs

Amendment 2 proposes two programs that would encourage vessels to engage in cooperative research, including, but not limited to: Research to minimize bycatch and interactions of the monkfish fishery with sea turtles and other protected species; research to minimize the impact of the monkfish fishery on EFH; research or experimental fisheries for the purpose of establishing a monkfish trawl exempted fishery (under the NE Multispecies FMP) in the NFMA; research on the biology or population structure and dynamics of monkfish; cooperative surveys; and gear efficiency.

A pool of 500 DAS would be set aside to distribute to vessels to engage in cooperative research projects. These DAS would be created by removing 500 DAS from the total available monkfish DAS prior to distribution to individual vessels. This reduction would amount to less than 1 DAS deducted for each individual vessel allocation. Should this program be approved, and individual DAS allocations changed because of this

approval, vessel owners would be notified of their new monkfish DAS allocation.

Under the first research program, NMFS would publish a request for proposals (RFP) and vessels would submit competitive bids to participate in specific research or survey projects. NMFS would then convene a review panel composed of Council members from the Councils' Monkfish Oversight Committee, the Council's Research Steering Committee, and other technical experts to review the proposals. NMFS would consider the recommendations of each panel member and award the contracts to successful applicants, including a distribution of DAS from the set-aside pool.

Any of the 500 DAS not distributed through the RFP process would be available to vessels through a second program, i.e., the existing experimental fishery permit (EFP) process, on a first-come-first-served basis. Under this second program, vessels applying for an EFP would indicate the number of monkfish DAS they would require to complete their research project. NMFS would then review the EFP application and, if approved, issue the permit exempting the vessel from monkfish DAS usage requirements. The total number of monkfish DAS that could be used in the two programs (distributed under the RFP process or used in the exemption program) could not exceed the originally established 500 DAS annual set-aside pool. For any DAS requested that exceed the analyzed 500 DAS set-aside, the applicant would be required to prepare an Environmental Assessment for the additional DAS exemption request.

These two research programs are being proposed for the purpose of expanding incentives to participate in a range of monkfish research and survey activities by reducing costs associated with research, and to streamline the EFP process.

#### 6. Northwest Atlantic Fisheries Organization (NAFO) Regulated Area Exemption Program

Amendment 2 proposes an exemption from certain FMP regulations for vessels that are fishing for monkfish under a High Seas Permit in the NAFO Regulated Area and transiting the EEZ with monkfish on board or landing monkfish in U.S. ports. Similar to the NAFO waters exemption in the NE Multispecies FMP, monkfish vessels enrolled in the NAFO Regulated Area Exemption Program would be exempt from the monkfish regulations pertaining to permit, minimum mesh size, effort control (DAS) and possession

limit rules. Further, the monkfish catch from the NAFO Regulated Area would not count against the monkfish total allowable catch (TAC), provided: The vessel has on board a letter of authorization (LOA) issued by the Regional Administrator; except for transiting purposes, the vessel fishes exclusively in the NAFO Regulated Area and does not harvest fish in, or possess fish harvested from, the EEZ; when transiting the EEZ, all gear is properly stowed and not available for immediate use; and the vessel complies with all High Seas Fishing Compliance Permit and NAFO conservation and enforcement measures while fishing in the NAFO Regulated Area. This proposed action would provide additional flexibility to monkfish vessels without compromising the mortality objectives of the FMP.

#### 7. Incidental Catch Provisions

Three adjustments to the monkfish incidental catch limits would be made under this rule. The first adjustment would increase the current 50-lb (22.7-kg) possession limit to 50 lb (22.7 kg) per day, or partial day, up to a maximum of 150 lb (68 kg) per trip, for vessels not fishing under a monkfish DAS and fishing with handgear and small mesh (see below), and for NE multispecies limited access vessels that are less than 30 feet in length. Small mesh is defined as mesh smaller than the NE multispecies minimum mesh size requirements when fishing in the Georges Bank, Gulf of Maine, and Southern New England Regulated Mesh Areas (RMAs), and mesh smaller than the summer flounder minimum mesh size when fishing in the Mid-Atlantic RMA.

The second adjustment would implement the same incidental monkfish trip limit of 50 lb (22.7 kg) per day, or partial day, up to a maximum of 150 lb (68 kg) per trip, for vessels fishing with surfclam or ocean quahog hydraulic dredges, and General Category sea scallop vessels fishing with a scallop dredge. These vessels are currently prohibited from retaining monkfish. For the purposes of these new trip limits, a day would be counted starting with the time the vessel leaves port (as recorded in its Vessel Trip Report (VTR)), or, if the vessel has an operational VMS, when the vessel crosses the VMS demarcation line.

The third monkfish incidental catch limit adjustment would be applicable to vessels fishing with large mesh in the NE Multispecies Mid-Atlantic Exemption Area (an area defined as west of 72°30' N. long. and which extends eastward around Long Island,

NY). This adjustment would increase the current 50-lb (22.7-kg) possession limit to 5 percent of the total weight of fish on board, up to a maximum of 450 lb (204.1 kg), based on tail weight equivalent. These three adjustments are proposed for the purpose of minimizing regulatory discards due to the incidental catch regulations without affecting the overall stock rebuilding program. Additionally, the third adjustment is being proposed to restore the trip limit that was in effect prior to redefining the Mid-Atlantic RMA in the NE Multispecies FMP.

#### 8. Decrease in Minimum Fish Size

Amendment 2 proposes to reduce the minimum fish size for monkfish in the SFMA to 11 inches (27.9 cm) tail length, 17 inches (43.2 cm) total length, from the current limit of 14 inches (35.6 cm) tail length, 21 inches (53.3 cm) total length. This change would make the minimum size consistent with that which currently applies in the NFMA, simplifying the FMP rules and improving enforceability. Allowing vessels to retain smaller monkfish would also likely minimize regulatory discards.

#### 9. Removal of 20-day Spawning Block Requirement

Current monkfish regulations require limited access monkfish permit holders to take a 20-day block out of the fishery during April through June each year, paralleling a similar regulation in the NE Multispecies FMP that applies from March through May. Amendment 2 proposes to eliminate this requirement, since it imposes an enforcement burden and increases the regulatory burden on monkfish vessels with no apparent biological or economic benefit. This change does not affect the requirement for monkfish vessels that also hold a NE multispecies limited access permit and, who, therefore, must abide by the NE multispecies 20-day spawning block requirement when fishing under a monkfish/multispecies DAS.

#### 10. Vessel Permit Baseline Modification

Currently, a vessel is limited to upgrading its vessel permit characteristics by 10 percent of the length and tonnage, and 20 percent of the horsepower of the vessel at the time it was issued a monkfish limited access permit. Since the monkfish limited access program was not implemented until 1999, vessels that also had been issued a prior limited access permit under another FMP, and that also downsized the vessel characteristics (either through a vessel replacement or modifications to the vessel, such as an

engine replacement) in the period between the issuance of the two permits, would have two different vessel permit baselines--one for the initial vessel characteristics, and one for the vessel characteristics at the time the monkfish permit was issued. This situation limits the ability of the vessel owner to transfer the permit to another vessel that is within the original upgrading limitations but that exceeds the monkfish permit upgrading limitations, without losing the vessel's monkfish permit. Amendment 2 would provide a one-time opportunity to allow vessel owners to set the monkfish permit baseline at the characteristics of the vessel when it was issued its first Federal limited access permit, rather than the vessel characteristics at the time it was issued a monkfish limited access permit under the initial monkfish FMP. Such an adjustment would only be made at the request of the vessel owner, provided such a request is made on or before April 30, 2006, or within 1 year of implementation of the final rule for Amendment 2, if approved, whichever is later.

Although this measure would benefit some vessels, it would not provide a solution to the broader problem of there being more than one vessel permit baseline for many vessels. For example, a monkfish vessel that holds Federal limited access permits in fisheries for which limited access programs were established after implementation of the initial monkfish FMP would not be affected by this proposed change and, therefore, could continue to have more than one vessel permit baseline on that vessel. Because it would not address the issue of more than one baseline for all fisheries, NMFS believes that it may be more efficient and comprehensive to address this particular change in an omnibus amendment that would address all FMP regulations that include Federal limited access permits and corresponding vessel permit baselines. Due to this concern, NMFS is highlighting this particular measure for comment.

#### 11. Modification of the Framework Adjustment Procedures

Amendment 2 proposes three additions to the list of actions that can be taken under the existing framework adjustment procedure. The proposed additional items that the Councils could consider under the framework adjustment procedure are: A monkfish DAS Leasing Program; measures to minimize the impact of the fishery on endangered or protected species; and measures that would implement bycatch reduction devices.

#### 12. Regulatory Changes

The proposed regulations also include several editorial revisions to the existing text in 50 CFR 648, subpart F, that are not proposed in Amendment 2. These revisions would remove obsolete language (references to regulations in effect during previous fishing years) and improve the organization and clarity of the regulations.

This proposed rule would also correct an error in the incidental catch limit regulations for scallop vessels fishing under a scallop DAS found at 50 CFR 648.94(c)(2). The original FMP and the preamble to the final rule implementing the FMP (64 FR 54732, October 7, 1999) stated that all vessels issued an incidental monkfish permit that are fishing under a scallop DAS, including both dredge vessels and vessels fishing under the trawl net exemption, are subject to an incidental catch limit of 300 lb (136.1 kg) tail-weight per DAS (see section 4.6.3.2 of the FMP). However, the regulatory text in the final rule implementing the FMP inadvertently only referenced scallop dredge vessels fishing under a scallop DAS. This proposed rule would correct the regulations at § 648.94(c)(2) to apply to all vessels fishing under a scallop DAS, consistent with the intent of the original FMP.

In addition, this proposed rule would correct the monkfish minimum trawl mesh size for the Southern New England (SNE) Monkfish and Skate Trawl Exemption Area, specified at § 648.80(b)(5)(i)(B), to be consistent with the minimum trawl mesh size for vessels fishing under only a monkfish DAS, specified at § 648.91(c)(1)(i). The necessary minimum mesh size change to this exemption program under the NE Multispecies FMP was inadvertently omitted from the regulatory text for the final rule implementing the original FMP.

Finally, this proposed rule would correct an error in the possession limit regulations for limited access Category C and D vessels fishing on a multispecies DAS in the SFMA with gear other than trawl gear, specified at § 648.94(b)(3)(ii), to reference the fact that the 50-lb (22.7-kg) tail-weight possession limit is per multispecies DAS. This error inadvertently occurred in the regulatory text of the final rule implementing the FMP, but was correctly described in the preamble to that rule.

#### Classification

At this time, NMFS has not determined that the FMP amendment that this proposed rule would implement is consistent with the

national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Councils prepared a DSEIS for this amendment; a notice of availability was published on April 30, 2004 (69 FR 23751); a correction of the telephone number included in the April 30, 2004, **Federal Register** notice (69 FR 23751) was published on May 7, 2004 (69 FR 25574). The Councils prepared an FSEIS for this amendment and submitted the final version to NMFS on December 10, 2004. A notice of availability for the FSEIS will publish shortly. The FSEIS analyzed the impact of the proposed action and alternatives compared to taking no action. The FSEIS concluded that the biological impact of the proposed measures would be neutral, except for a possible minor negative impact on monkfish yield per recruit resulting from the reduction in minimum fish size in the SFMA, if vessels target smaller fish. Also, the proposed Offshore Fishery Program in the SFMA and the modification of the permit qualification criteria could cause some effort to shift from inshore to offshore areas, but the impact of such a shift cannot be predicted. The proposed measures are not expected to have a significant impact on protected species, although the Offshore Fishery Program may have a positive impact, since overall effort would be reduced due to the pro-rating of DAS. The proposed measures will not have an adverse impact on habitat. Two measures are specifically designed to minimize, to the extent practicable, the effect of the fishery on EFH. These measures, the SFMA roller gear restriction and the closure of Oceanographer and Lydonia Canyons, would have a positive, but not significant, impact on habitat, since both are preventative, rather than restrictive, when compared to current fishing practices. The socio-economic impacts of the proposed action are expected to be slightly positive, although some measures would have no impact because they are either administrative or do not affect current fishing activities (i.e., they are preventative).

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for

this action, are contained in the preamble to this proposed rule. There are no Federal rules that may duplicate, overlap, or conflict with the proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the New England Fishery Management Council (see **ADDRESSES**).

#### **Description of Small Entities to Which the Proposed Rule Will Apply**

The measures proposed in Amendment 2 could impact any commercial vessel issued a Federal monkfish vessel permit. There are two main components of the monkfish fleet: Vessels eligible to participate in the limited access sector of the fleet, and vessels that participate in the open access sector under the incidental catch permit. In 2001, there were 723 monkfish limited access vessels, 687 of which were participants during fishing year (FY) 2001. In addition, there were 1,977 incidental catch permits, 1,023 of which participated in the fishery. Under the Small Business Administration (SBA) size standards for small fishing entities, i.e., \$3.5 million, all of the participating vessels are considered small, as gross sales by any entity do not exceed this threshold. The proposed actions would provide regulatory relief to small fishing vessels participating in the monkfish fishery.

#### **Economic Impacts of the Proposed Action**

##### *1. Modification of the Permit Qualification Criteria*

Under the new limited access permits proposed in Amendment 2, economic opportunities would be restored for some vessels fishing south of 38° 20'N. lat. It is possible that the addition of new moratorium permitted vessels will have an impact on the trip limits for other vessels fishing in the SFMA, since the TAC would be distributed over an increased number of vessels, although this economic impact from this change cannot be accurately estimated. Preliminary estimates indicate that up to five additional vessels could qualify for a limited access monkfish permit under the proposed action. From January 1, 1995, to the implementation of the initial FMP in November 1999, these five vessels averaged approximately \$78,000 in revenues from monkfish, out of their total revenues of \$480,000 for the same period.

##### *2. Offshore Fishery Program*

The proposed Offshore Fishery Program in the SFMA would be voluntary and would allow vessels to use their available fishing time more

efficiently by providing vessels with an increased monkfish trip limit in exchange for a reduction in their monkfish DAS. Over a fishing season, a vessel participating in the program could potentially achieve higher profitability because more monkfish could be retained using fewer overall inputs. While VMS would be required for participating vessels, and vessels currently not having VMS would have to bear the cost of installation (approximately \$3,100 per unit), each individual would be able to weigh the benefits and costs of participating in the program.

##### *3. Closure of Oceanographer and Lydonia Canyons*

The economic effect of the proposed closure of Oceanographer and Lydonia Canyons to monkfish vessels was estimated by identifying the fishing activity taking place within the areas using the position coordinates provided in VTRs for calendar years 1999 and 2001. No trips were identified as having occurred within the proposed closure areas. Based upon this analysis, the economic effect of the closure would be zero.

Although vessels have not fished for monkfish in these canyon areas in the past, the establishment of an Offshore Fishery Program in this amendment, if approved, could encourage monkfish vessels to fish in these areas in the future. Thus, the intent of this measure is proactive in that it would prohibit monkfish vessels from fishing in these areas, which contain sensitive deep water coral habitat.

##### *4. SFMA Roller Gear Restriction*

Restricting the trawl roller gear diameter to a 6-inch (15.2-cm) maximum for vessels fishing on a monkfish DAS in the SFMA may have some short-term negative economic impacts on some vessels, since vessels using non-conforming gear would be required to bear the cost of making the necessary change. However, 6-inch (15.2-cm) roller gear is already used by many vessels in the SFMA, reducing the potential impact of this proposed measure. The effect of this measure is not quantifiable, since the number of non-conforming vessels cannot be determined at this time.

##### *5. Cooperative Research Incentive Programs*

The economic impacts of the changes to the cooperative research programs funding would be, at most, redistributive in nature. The 500-DAS set-aside available for research purposes would be drawn equally from the DAS

allocations of all monkfish vessels. Thus, monkfish vessels that use their full allocation of DAS and do not participate in research projects would experience a loss in fishing opportunities, although minor (less than 1 DAS per vessel), while other vessels could expand their fishing opportunities through participation in such projects. Vessels not using their full allocations of DAS would not be affected.

#### 6. NAFO Regulated Area Exemption Program

The proposed action would exempt anyone fishing in the NAFO regulatory area from EEZ regulations. Vessels would be assumed compliant with NAFO regulations and would be issued a High Seas Fishing Compliance permit, relieving participating vessels from dual compliance with both NAFO and EEZ regulations. While this would provide vessels with greater flexibility compared to current regulations, the economic impact of this change cannot be estimated, since the extent that current regulations inhibit domestic vessels from participating in the NAFO Regulatory Area is unknown. However, this reduction in regulatory burden would likely have a positive economic impact, since the EEZ measures are more restrictive than their NAFO counterparts.

#### 7. Incidental Catch Provisions

Based on FY 2001 VTR records, modification of the incidental catch limits would affect a total of 835 trips made by 112 vessels, providing these small entities an opportunity to retain more monkfish than under current conditions. Since the proposed change represents an increase over current trip limits, it is impossible to provide a precise estimate of the economic benefit provided by the change; however, an upper bound estimate of the economic benefit can be calculated by assuming that all trips would retain the maximum allowable limit. Using the average 2001 monkfish (tail-weight) price of \$2.53 per lb, the maximum revenue gain would be \$192,000, an average benefit of \$1,700 in gross fishing revenue for the 112 vessels that would benefit.

Based on FY2001 VTR data, 1,620 trips made by 52 vessels would potentially be affected by the proposed change to the incidental catch limit for General category scallop and clam dredge vessels. Most of these trips were 24 hours or less, and nearly all were less than 48 hours. Thus, the maximum benefit from a 50-lb (22.7-kg) trip limit would be \$204,000, again using the average 2001 monkfish price of \$2.53 per lb. This maximum benefit assumes

that catch rates on every trip would be at least 50 lb (22.7 kg), which is unlikely, since the median landings for vessels with a monkfish incidental catch permit were only 25 lb (11.3 kg). At this median level, the revenue gain would be approximately \$102,000, an average of just under \$2,000 per vessel. The proposed incidental catch limit increase would provide only a modest increase above this level since few General category scallop or clam dredge trips are more than 24 hours, and nearly all are less than 48 hours. Assuming median landings, the maximum benefit would be only \$10,250 more than that of the 50-lb (22.7-kg) incidental trip limit.

Based on FY 2001 VTR records, the proposed change to the incidental catch limit for summer flounder vessels would affect 114 vessels. Using these VTR records, an estimate of the potential revenues that would be restored to these vessels was calculated. Adjusting the observed monkfish landings by the current incidental catch limit of 50 lb (22.7 kg) per trip, the average annual restored landings per vessel would be 326 lb (147.9 kg), translating to \$825 per vessel at the average 2001 monkfish price per pound of \$2.53. However, the impact varies greatly across vessels, ranging from no impact for vessels without an observed trip exceeding 50 lb (22.7 kg), to almost \$10,000.

#### 8. Minimum Fish Size

The proposed Amendment 2 change to the minimum fish size is specific to the SFMA and, therefore, would affect only vessels that fish in that area. Based on FY 2001, the 170 vessels that fished in the SFMA would experience reduced regulatory burden as well as increased economic opportunities under this proposed measure. The 73 additional vessels that chose to fish in both management areas would also benefit, though only on the trips in the SFMA. However, as noted above, without detailed information on the size distribution of the commercial catch in both areas, an accurate assessment of the economic benefit that would accrue to each vessel is not possible.

#### 9. Removal of the 20-day Block Requirement

The proposed removal of the 20-day block requirement would result in a reduction in regulatory burden when compared to current conditions for the 45 Category A and B monkfish limited access vessels. Category C and D monkfish permitted vessels that also hold a NE multispecies permit, are required to take a 20-day block out of the NE multispecies fishery. However,

the extent of the regulatory relief provided by the proposed removal of this requirement is unknown. The current requirement to be out of the fishery for 20 days only means that vessels cannot call in a monkfish DAS during that time. The vessels are still able to fish in other fisheries and are allowed to retain monkfish up to the incidental catch limits for those fisheries. Since the 20-day block may be taken at any time during the prescribed period, vessels can choose the block they expect to be the most advantageous. Nonetheless, as above noted, removal of this requirement does afford the vessels greater flexibility in choosing when to fish for monkfish and when to fish for other species.

#### 10. Vessel Baseline Modification

Allowance of a vessel permit baseline modification would not have an immediate economic impact on a vessel's ability to earn fishing income in the monkfish fishery, since no proposed measures are tied to the physical dimensions of the vessels. However, the value of the vessel could be affected, depending on whether the baseline is higher or lower than the current monkfish baseline, and there may be implications for the pool of trading partners should a monkfish DAS leasing program be developed in the future.

#### 11. Modification of the Framework Adjustment Procedure

The proposed action would modify the framework adjustment process, expanding the list of frameworkable measures to include development of a monkfish DAS leasing program, measures to minimize impact on protected species, and requirements to use bycatch reduction devices. While the individual frameworkable measures may have associated economic impacts and regulatory burdens, which will be dependent on the specific measures that may be proposed in the future, simply adding these measures to the list of actions that can be taken under the framework adjustment process is administrative in nature and does not have any impacts on any participant in the fishery. The economic impact of each measure will be analyzed in the associated framework action, should the measures be given further consideration by the Councils.

#### Economic Impacts of Alternatives to the Proposed Action

This section describes the impacts of management measures that were considered by the Councils but not adopted as part of Amendment 2 and compares the economic of the specified

measure to those resulting from no action under Amendment 2.

### 1. Monkfish DAS Usage by Limited Access Monkfish Category C and D Vessels

The Councils considered several alternatives that would have allowed limited access monkfish Category C and D vessels to fish under a monkfish DAS without concurrently using a NE multispecies or scallop DAS, including two options that would have allocated monkfish-only DAS uniformly among all vessels or individually based on a vessel's fishing history. These alternatives would have affected 662 limited access Category C or D monkfish vessels. Economic impacts would have likely resulted in neutral or positive economic impacts, assuming that the overall effort within the monkfish fishery would not have increased. If effort in the monkfish fishery would have increased, necessary reductions in trip limits and DAS allocations would have resulted in reduced economic opportunities.

### 2. Incidental Catch Limits

The Councils considered increasing the current monkfish incidental catch limit of 50 lb (22.7 kg) per trip to a maximum of 500 lb (226.8 kg) per trip by allowing vessels to retain up to 50 lb (22.7 kg) of monkfish per day for a 10-day trip. A total of 112 vessels would have been affected by this measure, resulting in a revenue gain of \$322,000, or an average benefit of \$2,900 per vessel.

### 3. Minimum Trawl Mesh Size When Fishing on a Monkfish DAS

Two alternatives were considered by the Councils that would have required vessels to use 12-inch (30.5-cm) square mesh in the codend and either 12-inch (30.5-cm) diamond mesh or the minimum mesh size required in the NE Multispecies FMP in the body of the net. These gear requirements would have been required when fishing monkfish-only DAS, if de-coupled from NE multispecies or scallop DAS as proposed in other rejected alternatives specified above, or on a monkfish/multispecies DAS for limited access monkfish Category C or D vessels. These measures would have affected all limited access monkfish vessels using large mesh otter trawls. These vessels would have had to replace any nonconforming gear, at considerable expense.

### 4. Minimum Fish Size

The Council considered four alternatives for minimum fish size: (1)

The no action alternative (11-inch (27.9-cm) tail-length, 17-inch (43.2-cm) total-length in the NFMA, and 14-inch (35.6-cm) tail-length, 21-inch (53.3-cm) total-length in the SFMA); (2) a uniform 10-inch (25.4-cm) tail-length or 15-inch total-length minimum fish size (Alternative 2, Option 2); (3) elimination of the minimum size limit (Alternative 3); and (4) a 14-inch (35.6-cm) tail-length or 21-inch (53.3-cm) total-length minimum fish size for vessels fishing under a monkfish-only DAS (Alternative 4). Alternative 2 would likely have increased economic opportunities for all vessels fishing for monkfish, but would have had a greater beneficial impact on vessels fishing in the SFMA than those fishing in the NFMA since it would have resulted in a greater reduction in the minimum size, and, therefore, more of an increase in the size range of monkfish that vessels fishing in the SFMA are able to land. Based on public comment, Alternative 3 would have provided an incentive to develop markets for smaller monkfish, which could have had a negative impact on yield-per-recruit. Finally, the analysis in the FSEIS indicates that Alternative 4 would not have affected vessels fishing in the SFMA, but would have resulted in decreased economic opportunities for vessels fishing in the NFMA under a monkfish-only DAS, with only negligible effects.

### 5. Closed Season or Time Out of the Fishery

The Councils rejected an alternative that would have doubled the current 20-day block out of the fishery to 40 days, but that would have allowed vessels to take the entire 40 days out of the fishery consecutively or as two 20-day blocks. The Councils also rejected an alternative that would have required all limited access monkfish vessels, including scallop vessels also possessing limited access monkfish Category C or D permits, to take time out of the monkfish fishery. The economic impacts of these alternatives are unclear, given the difficulty in assessing when individual vessels will plan their trips. However, it is not expected that the latter alternative would have adversely impacted scallop vessels.

### 6. Offshore Fishery Program

The Councils are proposing the establishment of an Offshore Fishery Program in Amendment 2 (Alternative 2). However, within Alternative 2, the Councils considered, but rejected, options for the area covered under this program (Area Option 2), and for the applicable trip limits and associated

DAS allocation (DAS/Trip Limit Option 1).

Since the rejected area option is not significantly different from the proposed area, and given the proposed distance from shore, participation in the fishery would likely be limited to larger vessels. Further, the rejected trip limit option would provide vessels with the flexibility of choosing the DAS/trip limit ratio that is most economically beneficial to them. Under these rejected options, vessels would still be subject to VMS requirements. As a result, vessels that do not have a VMS unit currently installed would have to bear the cost of installation in order to participate in this voluntary program.

### 7. Modification of the Limited Access Permit Qualification Criteria

The Councils considered four alternatives, plus the no action alternative, for modifying the limited access permit qualification criteria, and ultimately selected Alternative 3. The only difference between the non-preferred alternatives and the preferred alternative is the qualification period. The qualification periods for the non-preferred alternatives are as follows: Alternative 1, the four years prior to June 15, 1998; Alternative 2, the four years prior to June 15, 1997; Alternative 4, the four years prior to June 15, 1997, where landing took place during the months of March 15 - June 15. Under the no action alternative, no additional vessels would qualify for a limited access monkfish permit. Analysis of the NOAA Fisheries weighout and North Carolina Division of Marine Fisheries data indicate that the number of vessels that would qualify for monkfish limited access permits range from three under Alternatives 2 and 4, to seven under Alternative 1.

The vessel level economic impact on affected vessels is likely to be positive, due to the increased opportunity to fish for monkfish in the EEZ, but the magnitude of the impact cannot be determined for the following reasons: These vessels already prosecute the monkfish fishery in state waters during the same limited season when they would be able to fish in the EEZ; and it is unclear how the limitations on the fishery resulting from the sea turtle closures would offset any immediate benefit these vessels might realize from obtaining a Federal limited access monkfish permit.

### 8. Alternatives to Protect EFH

The Councils considered an alternative that contained alternative trawl configurations designed to minimize the impact of the monkfish

fishery on EFH for other species if DAS usage requirements were separated. This alternative (Alternative 4) may have had some short-term negative economic effects depending on the trawl configuration selected and the management area to which the configuration requirements would have applied. Changing the trawl configuration would require vessels using non-conforming gear to bear the cost of making the necessary changes.

The Councils also considered an option to close the waters above up to 12 large canyons from Norfolk Canyon to the Hague Line. Information from the VTR database shows that 30 trips occurred in these areas during 1999 and 2001. An assessment of all non-directed monkfish trips indicates that the majority of vessels were targeting squid or whiting, while most other trips were associated with the directed summer flounder fishery. Under closure option 1 (trawl gear only), nine trawl trips would have been affected based on the 1999 VTR data, and less than 3 trips would have been affected based on the 2001 VTR data. Option 2 would have affected an additional 21 gillnet trips based on the 2001 VTR data.

#### 9. NFMA Monkfish Trawl Experimental Fishery

A 2-year experimental fishery to establish a trawl exempted fishery in the NFMA was not adopted by the Councils. This experimental fishery would have allowed vessels to determine the appropriate time, place, and gear to target monkfish while on a monkfish-only DAS, without concurrently using a NE multispecies DAS. Since the Councils did not adopt a measure that would separate monkfish DAS from scallop or NE multispecies DAS, there would be little economic benefit for trawl vessels to use large mesh in the NFMA, as the current trip limits for vessels using groundfish gear would provide more economic opportunity for affected vessels.

#### 10. Changes to the Fishing Year

The Councils did not adopt several alternatives that would have changed the start date of the fishing year. These changes would have complicated the permit renewal process, since the monkfish fishing year would no longer have corresponded to the NE multispecies fishing year and would have affected a vessel owner's ability to effectively plan vessel operations for the year, as vessels would have received their DAS allocations for various fisheries at different times of the year. This would also have resulted in

increased costs for applying for and administering permit renewals.

#### Description of the Proposed Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

##### Reporting and Recordkeeping Requirements

The proposed measures under Amendment 2 include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) Annual declaration into the Offshore Fishery Program on the initial vessel permit application or vessel permit renewal application; (2) VMS purchase and installation; (3) VMS proof of installation; (4) automated VMS polling of vessel position once per hour while fishing under a Monkfish DAS in the Offshore Fishery Program; (5) request to power down VMS unit for a minimum of 30 days; (6) initial application for a limited access monkfish permit (Category G or H) under program for vessels fishing south of 38°20' N. lat.; (7) renewal of limited access monkfish permit (Category G or H) under program for vessels fishing south of 38°20' N. lat.; (8) appeal of denial of a limited access monkfish permit (Category G or H) under the program for vessels fishing south of 38°20' N. lat.; (9) application for a vessel operator permit for new limited access monkfish vessels; (10) vessel replacement or upgrade application for new limited access monkfish vessels; (11) confirmation of permit history application for new limited access monkfish vessels; (12) DAS reporting requirements (call-in/call-out) for new limited access monkfish vessels; (13) application for Good Samaritan DAS credit for new limited access monkfish vessels; (14) annual gillnet declaration and tag order request; (15) requests for additional gillnet tags; (16) notification of lost tags and request for replacement tags; (17) requests to change limited access monkfish vessel baseline specifications; and (18) requests for a LOA to fish for monkfish in NAFO Regulatory Area under the proposed exemption program.

##### Other Compliance Requirements

The measures proposed under Amendment 2 would require that all vessels participating in the Offshore Fishery Program purchase and install a VMS unit. The average VMS unit offered by the two vendors currently approved by NMFS costs approximately \$3,100 to purchase and install. Many of the limited access monkfish vessels expected to participate in the Offshore Fishery Program also possess limited

access NE multispecies permits. Since several new programs implemented under Amendment 13 to the NE Multispecies FMP also require the use of VMS, it is estimated that half of the 50 vessels expected to participate in the Offshore Fishery Program already have VMS units through participation in these NE multispecies programs and only 25 additional limited access monkfish vessels would be required to purchase a VMS under Amendment 2. This results in a combined one-time cost of \$77,500 for these 25 vessels. In addition, the average monthly cost to operate a VMS unit is \$150. This results in a combined annual cost associated with VMS usage under Amendment 2 of \$45,000 for these new VMS users. Five vessels fishing south of 38°20' N. lat. are expected to qualify for a limited access monkfish permit under Amendment 2. These vessels would be required to obtain a Federal vessel operator permit, if they do not already have one. These permits cost approximately \$10 due to the need for a color photograph, and are valid for 3 years. As a result, the yearly cost to these five vessels is estimated at \$16.67, or approximately \$3.33 per vessel. Finally, limited access monkfish vessels using gillnet gear must purchase gillnet tags. Each tag costs \$1.20 and may be used for at least 3 years. Monkfish vessels are allowed to use up to 160 gillnets. Therefore, if the five vessels fishing south of 38°20' N. lat. expected to qualify for a limited access monkfish permit under Amendment 2 elect to fish with gillnet gear, yearly costs associated with purchasing gillnet tags for each vessel would be a maximum of \$64 (i.e., \$192 every 3 years).

##### Public Reporting Burden

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average as follows:

1. Annual declaration into the Offshore Fishery Program on initial vessel permit application or vessel permit renewal application, OMB Control Number 0648-0202 (30 min/response);
2. VMS purchase and installation, OMB Control Number 0648-0202 (1 hr/response);
3. VMS proof of installation, OMB Control Number 0648-0202 (5 min/response);
4. Automated VMS polling of vessel position once per hour while fishing



under a monkfish DAS in the Offshore Fishery Program, OMB Control Number 0648-0202 (5 sec/response);

5. Request to power down VMS unit for a minimum of 30 days, OMB Control Number 0648-0202 (5 min/response);

6. Initial application for a limited access monkfish permit (Category G or H) under program for vessels fishing south of 38° 20' N. lat., OMB Control Number 0648-0202 (45 min/response);

7. Renewal of limited access monkfish permit (Category G or H) under program for vessels fishing south of 38° 20' N. lat., OMB Control Number 0648-0202 (30 min/response);

8. Appeal of denial of a limited access monkfish permit (Category G or H) under the program for vessels fishing south of 38° 20' N. lat., OMB Control Number 0648-0202 (2 hr/response);

9. Application for a vessel operator permit for new limited access monkfish vessels, OMB Control Number 0648-0202 (1 hr/response);

10. Vessel replacement or upgrade application for new limited access monkfish vessels, OMB Control Number 0648-0202 (3 hr/response);

11. Confirmation of permit history application for new limited access monkfish vessels, OMB Control Number 0648-0202 (30 min/response);

12. DAS reporting requirements (call-in/call-out) for new limited access monkfish vessels, OMB Control Number 0648-0202 (2 min/response);

13. Application for Good Samaritan DAS credit for new limited access monkfish vessels, OMB Control Number 0648-0202 (30 min/response);

14. Annual gillnet declaration and tag order request, OMB Control Number 0648-0202 (10 min/response);

15. Requests for additional gillnet tags, OMB Control Number 0648-0202 (2 min/response);

16. Notification of lost tags and request for replacement tags, OMB Control Number 0648-0202 (2 min/response);

17. Requests to change limited access monkfish vessel baseline specifications, OMB Control Number 0648-0202 (30 min/response); and

18. Requests for a letter of authorization to fish for monkfish in the NAFO Regulatory Area under the proposed exemption program, OMB Control Number 0648-0202 (5 min/response).

These burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

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 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: January 7, 2005.

#### Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, 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 § 648.2, the definition of “Prior to leaving port” is revised to read as follows:

#### § 648.2 Definitions.

\* \* \* \* \*

*Prior to leaving port*, with respect to the call-in notification system for NE multispecies, and the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category C, D, F, G or H permit provisions that are also fishing under a NE multispecies DAS, means no more than 1 hour prior to the time a vessel leaves the last dock or mooring in port from which that vessel departs to engage in fishing, including the transport of fish to another port. With respect to the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category A or B permit provisions, it means prior to the last dock or mooring in port from which a vessel departs to

engage in fishing, including the transport of fish to another port.

\* \* \* \* \*

3. In § 648.4, the introductory text of paragraph (a)(9)(i) is revised, paragraphs (a)(9)(i)(B), (H), and (M), and (a)(9)(i)(N)(1) and (3) are revised, and paragraphs (a)(9)(i)(A)(5), (6), and (7) are added to read as follows:

#### § 648.4 Vessel permits.

(a) \* \* \*

(9) \* \* \*

(i) *Limited access monkfish permits.*

(A) \* \* \*

(5) *Category F (vessels electing to participate in the Offshore Fishery Program).* Vessels intending to fish, or are fishing in, the Offshore Fishery Program, as described under 648.95, must apply for and be issued a Category F permit and fish under this permit category for the entire fishing year. For fishing year 2005, the owner of a vessel, or authorized representative, may change its previous 2005 limited access monkfish permit to a Category F permit within 45 days of the effective date of the final rule implementing Amendment 2, provided the vessel has not fished under the monkfish DAS program during the 2005 fishing year.

(6) *Category G permit (vessels restricted to fishing south of 38°20'N. lat. as described in § 648.92(b)(9)) that do not qualify for a monkfish limited access Category A, B, C, or D permit.* The vessel landed ≥ 50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish in the area south of 38°N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(7) *Category H permit (vessels fishing only south of 38°20'N. lat. as described in § 648.92(b)(9)) that do not qualify for a monkfish limited access Category A, B, C, D, or G permit.* The vessel landed ≥ 7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish in the area south of 38°N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(B) *Application/renewal restrictions.* No one may apply for an initial limited access monkfish permit for a vessel after November 7, 2000, unless otherwise allowed in this paragraph (a)(9)(i)(B). Vessels applying for an initial limited access Category G or H permit, as described in paragraphs (a)(9)(i)(A)(6) and (7) of this section must do, so on or before April 30, 2006.

\* \* \* \* \*

(H) *Vessel baseline specification.* The vessel upgrading baseline specifications in this section are the respective specification (length, GRT, NT, and

horsepower) of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such a permit, unless otherwise specified in this paragraph (a)(9)(i)(H). The owner of a vessel with multiple Federal limited access permits with different vessel baseline specifications for its monkfish limited access permit than the vessel baseline specifications for one or more of its other Federal permits may request that the Regional Administrator revise the monkfish permit vessel baseline specifications to be consistent with that of the vessel's first Federal limited access permit, provided such a request is made prior to May 1, 2006.

\* \* \* \* \*

(M) *Notification of eligibility for Category G and H permits.* (1) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available to inform them that they meet the qualification criteria described in paragraph (a)(9)(i)(A)(6) or (7) of this section and that they qualify for a limited access monkfish Category G or H permit. Vessel owners that pre-qualify for a Category G or H permit must apply for the limited access permit for which they pre-qualified prior to May 1, 2006, to meet the qualification requirements.

(2) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access monkfish Category G or H permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access monkfish Category G or H permit prior to May 1, 2006, by submitting written evidence that the vessel meets the qualification requirements described in paragraph (a)(9)(i)(A)(6) or (7) of this section.

(N) *Appeal of denial of permit.* (1) An applicant denied a limited access monkfish Category G or H permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria described in paragraph (a)(9)(i)(A)(6) or (7) of this section. The appeal shall set forth the applicant's belief that the Regional Administrator made an error.

(2) \* \* \*

(3) *Status of vessels pending appeal.* (i) A vessel denied a limited access monkfish Category G or H permit may fish under the monkfish DAS program, provided that the denial has been

appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the monkfish DAS program. The Regional Administrator will issue such a letter for the pendency of any appeal, which decision is the final administrative action of the Department of Commerce pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. A vessel with such a letter of authorization shall not exceed the annual allocation of monkfish DAS as specified in § 648.92(b)(1) and must report the use of monkfish DAS according to the provisions of § 648.10(b) or (c), whichever applies. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter shall become invalid 5 days after receipt of the notice of denial. If the appeal is finally approved, any DAS used during pendency of the appeal shall be deducted from the vessel's annual allocation of monkfish DAS for that fishing year.

(ii) *Monkfish incidental catch vessels (Category E).* A vessel of the United States that is subject to these regulations and that has not been issued a limited access monkfish permit under paragraph (a)(9)(i)(A) of this section, is eligible for and may be issued a monkfish incidental catch (Category E) permit to fish for, possess, or land monkfish subject to the restrictions in § 648.94(c).

\* \* \* \* \*

4. In § 648.9, paragraph (c)(2)(i)(C) is revised, and paragraph (c)(2)(i)(D) is added to read as follows:

**§ 648.9 VMS requirements.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(C) The vessel has been issued an Atlantic herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times; or

(D) For vessels electing to fish under the Offshore Fishery Program in the SFMA, as specified under § 648.95, and that have been issued a valid monkfish limited access Category F permit, the vessel owner signs out of the VMS program for a minimum period of 30 days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, provided the vessel does not sign out of the VMS program during the Offshore Fishery Program season specified at § 648.95(d),

does not engage in any fisheries for which VMS is required, and the vessel complies with all conditions and requirements of said letter.

\* \* \* \* \*

5. In § 648.10, paragraph (c)(1) is revised and paragraph (b)(1)(ix) is added to read as follows:

**§ 648.10 DAS notification requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ix) A limited access monkfish vessel electing to fish in the Offshore Fishery Program in the SFMA, as provided in § 648.95.

\* \* \* \* \*

(c) \* \* \*

(1) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in this paragraph (c)(1), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, port of departure, and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (c)(6) of this section. Vessels issued a limited access monkfish Category C, D, F, G, or H permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(i), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

\* \* \* \* \*

6. In § 648.14, the introductory sentence of paragraph (y) is revised, paragraphs (a)(125), (x)(8), (y)(1)(iii), (y)(3), (y)(7) and (y)(21) are revised, and paragraph (y)(1)(iv) is added to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(125) For vessels issued a limited access NE multispecies permit, or those issued a limited access NE multispecies permit and a limited access monkfish permit (Category C, D, F, G, or H), but are not fishing under the limited access monkfish Category A or B provisions as allowed under § 648.92(b)(2), call into the DAS program prior to 1 hour before leaving port.

\* \* \* \* \*

(x) \* \* \*

(8) *Monkfish.* All monkfish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of evidence demonstrates that such fish were harvested by a vessel that fished exclusively in the NAFO Regulatory Area, as authorized under § 648.17.

\* \* \* \* \*

(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, unless otherwise fishing in accordance with, and exempted under, the provisions of § 648.17:

(1) \* \* \*

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

(iv) The monkfish were harvested from the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

\* \* \* \* \*

(3) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, any monkfish without having been issued a valid monkfish vessel permit, unless the vessel fishes for monkfish exclusively in state waters, or exclusively in the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

\* \* \* \* \*

(7) Fail to comply with the area restrictions applicable to limited access Category G and H vessels specified under § 648.92(b)(9).

\* \* \* \* \*

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

\* \* \* \* \*

7. Section 648.17 is revised to read as follows:

**§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.**

(a) *Fisheries included under exemption.* (1) *NE Multispecies.* A vessel issued a valid High Seas Fishing Compliance permit under 50 CFR part 300 and that complies with the requirements specified in paragraph (b) of this section, is exempt from NE multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the EEZ with NE multispecies on board the vessel, or landing NE multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(2) *Monkfish.* A vessel issued a valid High Seas Fishing Compliance permit under 50 CFR part 300 and that complies with the requirements specified in paragraph (b) of this section is exempt from monkfish permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.91, 648.92 and 648.94, respectively, while transiting the EEZ with monkfish on board the vessel, or landing monkfish in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(b) *General requirements.* (1) The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the EEZ;

(3) When transiting the EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

(4) The vessel operator complies with the High Seas Fishing Compliance permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

8. In § 648.80, paragraph (b)(5)(i)(B) is revised to read as follows:

**§ 648.80 NE multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(i) \* \* \*

(B) All trawl nets must comply with the minimum mesh size specified under § 648.91(c)(1)(i).

\* \* \* \* \*

9. In § 648.82, paragraph (k)(4)(vi) is revised to read as follows:

**§ 648.82 Effort-control program for NE multispecies limited access vessels.**

\* \* \* \* \*

(k) \* \* \*

(4) \* \* \*

(vi) Monkfish Category C, D, F, G and H vessels. A vessel that possesses a valid limited access NE multispecies DAS permit and a valid limited access monkfish Category C, D, F, G or H permit and leases NE multispecies DAS to or from another vessel is subject to the restrictions specified in § 648.92(b)(2).

\* \* \* \* \*

10. In § 648.91, paragraph (c)(1)(ii) and (iv) are revised, and paragraph (c)(3) is added to read as follows:

**§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) *Trawl nets while on a monkfish and NE multispecies DAS.* For vessels issued a Category C, D, G or H limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS, the minimum mesh size is that allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i), depending upon, and consistent with, the NE multispecies regulated mesh area being fished, unless otherwise specified in this paragraph (c)(1)(ii). Trawl vessels participating in the Offshore Fishery Program, as described in § 648.95, and that have been issued a Category F monkfish limited access permit, are subject to the minimum mesh size specified in paragraph (c)(1)(i) of this section.

\* \* \* \* \*

(iv) *Authorized gear while on a monkfish and scallop DAS.* Vessels issued a Category C, D, G or H limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(i) of this section.

\* \* \* \* \*

(3) *SFMA trawl roller gear restriction.* The roller gear diameter on any vessel on a monkfish DAS in the SFMA may not exceed 6 inches (15.2 cm) in diameter.

11. In § 648.92, paragraphs (b)(1)(i), (b)(2), (b)(6), and (b)(8)(i)(B) are revised; paragraphs (b)(1)(iii) and (iv), (b)(9) and (c) are added; and paragraph (b)(5) is removed and reserved to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *General provision.* All limited access monkfish permit holders shall be allocated monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless modified by paragraph (b)(1)(ii) of this section according to the provisions specified at § 648.96(b)(3). The number of monkfish DAS to be allocated, before accounting for any such modification, is 40 DAS minus the amount calculated in paragraph (b)(1)(iv) of this section, unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iii) of this section. Limited access NE multispecies and limited access sea scallop permit holders who also possess a valid limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with their monkfish DAS, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this part F.

\* \* \* \* \*

(iii) *Offshore Fishery Program DAS allocation.* A vessel issued a Category F permit, as described in § 648.95, shall be allocated a pro-rated number of DAS as specified at § 648.95(g)(2).

(iv) *Research DAS set-aside.* A total of 500 DAS will be available for cooperative research programs as described in paragraph (c) of this section. These DAS will be deducted from the total number of DAS allocated to all monkfish limited access permit holders, as specified under paragraph (b)(1)(i) of this section. A per vessel deduction will be determined as follows: Allocated DAS minus the quotient of 500 DAS divided by the total number of limited access permits issued in the previous fishing year. For example, if the DAS allocation equals 40 DAS and if there are 750 limited access permits issued in FY 2004, the number of DAS allocated to each vessel in FY 2005 will be 40 DAS minus (500 DAS divided by 750 permits), or 40 DAS minus 0.7 DAS, or 39.3 DAS.

(2) *Category C, D, F, G or H limited access monkfish permit holders.* (i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G or H vessel with a limited access NE multispecies DAS

permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. (For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies Category A DAS would also be used, unless otherwise authorized under § 648.85(b)(6). However, after all 30 NE multispecies Category A DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies.)

(ii) *Category C, D, F, G or H vessels that lease NE multispecies DAS.* (A) A monkfish Category C, D, F, G or H vessel that has "monkfish-only" DAS, as specified in paragraph (b)(2)(i) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(k), is required to fish its available "monkfish-only" DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C, D, F, G or H vessel that leases DAS to another vessel(s), pursuant to § 648.82(k), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

\* \* \* \* \*

(5) [Reserved]

(6) *Declaring monkfish DAS.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the monkfish DAS program using the notification requirements specified in § 648.10.

\* \* \* \* \*

(8) \* \* \*

(i) \* \* \*

(B) *Category C, D, F, G and H vessels that possess a limited access NE multispecies permit.* A vessel issued a valid monkfish limited access Category C, D, F, G or H permit that possesses a valid limited access NE multispecies permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 150 gillnets. A vessel issued a NE multispecies limited access permit and a limited access monkfish permit, and fishing under a combination of monkfish, roundfish, and flatfish gillnets, up to 150 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

(9) *Category G and H limited access permit holders.* (i) Vessels issued limited access Category G and H permits shall be restricted to fishing on a monkfish DAS in the area south of 38°20' N. lat.

(ii) Vessels issued valid limited access monkfish Category G or H permit that also possess a limited access multispecies or limited access scallop permit are subject to the same provisions as Category C or D vessels, respectively, unless otherwise stated under this part.

(c) *Monkfish research--(1) DAS Set-Aside Program.* (i) NMFS will publish a Request for Proposals (RFP) in the **Federal Register** at least 3 months prior to the start of the upcoming fishing year, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the Councils.

(ii) NMFS shall convene a review panel that may include members of the Councils' Monkfish Oversight Committee, the Council's Research Steering Committee, and other technical experts, to review proposals submitted in response to the RFP.

(A) Each panel member shall recommend which research proposals should be authorized to utilize the research DAS set aside in accordance with paragraph (b)(1)(iv) of this section, based on the selection criteria described in the RFP.

(B) The Regional Administrator and the NOAA Grants Office shall consider each panel member's recommendation, provide final approval of the projects and exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(iii) The grant awards approved under the RFPs shall be for the upcoming fishing year. Proposals to fund research that would start prior to the fishing year are not eligible for consideration. Multi-year grant awards may be approved under an RFP for an upcoming fishing year, so long as the research DAS available under subsequent RFPs are adjusted to account for the approval of multi-year awards. All research trips shall be completed within the fishing year(s) for which the research grant was awarded.

(iv) Research projects shall be conducted in accordance with provisions approved and provided in an Exempted Fishing Permit (EFP) issued by the Regional Administrator, as authorized under § 600.745(b)(2).

(v) If the Regional Administrator determines that the annual allocation of research DAS will not be used in its entirety once all of the grant awards have been approved, the Regional Administrator shall reallocate the unallocated research DAS as exempted DAS to be authorized as described in paragraph (c)(2) of this section.

(iv) For proposals that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(2) *DAS Exemption Program.* (i) Vessels that seek to conduct monkfish research within the current fishing year, and that were not included in the RFP process during the previous fishing year, may seek exemptions from monkfish DAS for the purpose of conducting exempted fishing activities, as authorized at § 600.745(b), under the following conditions and restrictions:

(A) The request for a monkfish DAS exemption must be submitted along with a complete application for an EFP to the Regional Administrator. The requirements for submitting a complete EFP application are provided in § 600.745(b)(2).

(B) *Exempted DAS must be available for usage.* Exempted DAS shall only be made available by the Regional Administrator if it is determined that the annual set-aside of research DAS

will not be used in its entirety, as described in paragraph (c)(1)(v) of this section. If exempted DAS are not available for usage, the applicant may continue to seek an exemption from monkfish DAS, but may be required to conduct an analysis of the impacts associated with the monkfish DAS exemption request before issuance of the EFP application will be considered.

(C) For EFP applications that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(ii) Monkfish DAS exemption requests shall be reviewed and approved by the Regional Administrator in the order in which they are received.

12. In § 648.93, paragraph (b) is revised to read as follows:

**§ 648.93 Monkfish minimum fish sizes.**

\* \* \* \* \*

(b) *Minimum fish size.* The minimum fish size for all vessels is 17 inches (43.2 cm) total length/11 inches (27.9 cm) tail length.

13. In § 648.94, paragraphs (b)(2)(i), (ii) and (iii), (b)(3)(i) and (ii), (b)(5), (b)(6), and (c) are revised, and paragraph (b)(2)(iv) is added to read as follows:

**§ 648.94 Monkfish possession and landing restrictions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) *Category A, C, and G vessels.*

Category A, C, and G vessels fishing under the monkfish DAS program in the SFMA may land up to 550 lb (250 kg) tail-weight or 1,826 lb (828 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), unless modified pursuant to § 648.96(b)(2)(ii).

(ii) *Category B, D, and H vessels.*

Category B, D and H 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 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), unless modified pursuant to § 648.96(b)(2)(ii).

(iii) *Category F vessels.* Vessels issued a Category F permit are subject the possession and landing restrictions specified at § 648.95(g)(1).

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

(3) *Category C, D, F, G and H vessels fishing under the multispecies DAS program.*—(i) *NFMA*—(A) *Category C and D vessels.* There is no monkfish trip limit for a Category C or D vessel that is fishing under a NE multispecies DAS exclusively in the NFMA.

(B) *Category F, G and H vessels.* Vessels issues a Category F, G or H permit that are fishing under a multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(ii) *SFMA*—(A) *Category C, D, and F vessels.* If any portion of a trip is fished only under NE a multispecies DAS, and not under a monkfish DAS, in the SFMA, a Category C, D, or F 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 per DAS if gear other than trawl gear is used during the trip.

(B) *Category G and H vessels.* Vessels issues a Category G or H permit that are fishing under a multispecies DAS in the SFMA are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

\* \* \* \* \*

(5) *Category C, D, G, or H scallop vessels declared into the monkfish DAS program without a dredge on board, or not under the net exemption provision.* Category C, D, G or H vessels that have declared into the monkfish DAS program and that do not fish with or have a dredge on board, or that 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, or the landing limit specified in § 648.95(g)(1), if issued a Category F permit. 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 NE 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 paragraphs (c)(3) through (c)(6) of this section.

\* \* \* \* \*

(c) *Vessels issued a monkfish incidental catch permit*--(1) *Vessels fishing under a multispecies DAS*--(i) *NFMA*. Vessels issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category F, G or H 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.

(ii) *SFMA*. If any portion of the trip is fished by a vessel issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category G or H permit, under a multispecies DAS in the SFMA, the vessel may land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(2) *Scallop vessels fishing under a scallop DAS*. A scallop vessel issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category G or H 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) *Vessels fishing with large mesh and not fishing under a monkfish, NE multispecies or scallop DAS*--(i) A vessel issued a valid monkfish incidental catch (Category E) permit fishing in the GOM or GB RMAs, or the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at § 648.80(a)(3)(i), (a)(4)(i), and (b)(2)(i), respectively, while not on a monkfish, NE 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.

(ii) A vessel issued a valid monkfish incidental catch (Category E) permit fishing in the SNE and MA RMAs west of the MA Exemption Area boundary with mesh no smaller than specified at § 648.104(a)(1) while not on a monkfish,

NE 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, but not to exceed 450 lb (204 kg) tail-weight or 1,494 lb (678 kg) whole weight of monkfish. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(4) *Vessels fishing with small mesh and not fishing under a monkfish, NE multispecies or scallop DAS*. A vessel issued a valid monkfish incidental catch (Category E) permit fishing with mesh smaller than the mesh size specified by area in paragraph (c)(3) of this section, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land only up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) per trip.

(5) *Small vessels*. A vessel issued a limited access NE multispecies permit and a valid monkfish incidental catch (Category E) permit that is < 30 ft (9.1 m) in length and that elects not to fish under the NE multispecies DAS program may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) per trip.

(6) *Vessels fishing with handgear*. A vessel issued a valid monkfish incidental catch (Category E) permit and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) per trip.

(7) *Vessels fishing with surfclam or ocean quahog dredge gear*. A vessel issued a valid monkfish incidental catch (Category E) permit and a valid surfclam or ocean quahog permit, while fishing exclusively with a hydraulic clam dredge or mahogany quahog dredge, may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) per trip.

(8) *General Category Scallop vessels*. A vessel issued a valid monkfish incidental catch (Category E) permit and a valid General Category Scallop permit, while fishing exclusively with scallop dredge as specified in § 648.51(b), may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole

weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) per trip.

\* \* \* \* \*

14. Section 648.95 is added to read as follows:

**§ 648.95 Offshore Fishery Program in the SFMA.**

(a) *General*. Any vessel issued a valid monkfish limited access permit is eligible to apply for a Category F permit in order to fish in the Offshore Fishery Program in the SFMA.

(1) A vessel issued a Category F permit is subject to the specific provisions and conditions of this section while fishing on a monkfish DAS.

(2) When not fishing on a monkfish DAS, a Category F vessel may fish under the regulations applicable to the monkfish incidental catch (Category E) permit, specified under paragraph § 648.94(c) of this section. When fishing on a NE multispecies DAS in the NFMA, a Category F vessel that also possesses a NE multispecies limited access permit is subject to the possession limits applicable to vessels issued an incidental catch permit as described in § 648.94(c)(1)(i).

(3) Limited access Category C or D vessels that apply for and are issued a Category F permit remain subject to the provisions specific to Category C and D vessels, unless otherwise specified under this part.

(b) *Declaration*. A vessel intending to fish in, or fishing in, the Offshore Fishery Program must obtain a monkfish limited access Category F permit and fish under this permit for the entire fishing year, subject to the conditions and restrictions specified under this part. For fishing year 2005, the owner of a vessel, or authorized representative, may change its previous 2005 limited access monkfish permit category to permit Category F within 45 days of the effective date of the final rule implementing Amendment 2, provided the vessel has not fished under the monkfish DAS program during the 2005 fishing year.

(c) *Offshore Fishery Program Area*. The Offshore Fishery Program Area is bounded on the south by 38°00 N. lat., and on the north, west and east by the area coordinates specified in § 648.23(a).

(d) *Season*. October 1 through April 30 each year.

(e) *Restrictions*. (1) Except for the transit provisions provided for in paragraph (f) of this section, a vessel issued a valid Category F permit may only fish for, possess, and land monkfish in or from the Offshore

Fishery Program Area while on a monkfish DAS.

(2) A vessel enrolled in the Offshore Fishery Program is restricted to fishing under its monkfish DAS during the season in paragraph (d) of this section.

(3) *Gear.* A vessel issued a Category F permit that is fishing on a monkfish DAS is subject to the minimum mesh size requirements applicable to limited access monkfish Category A and B vessels, as specified under § 648.91(c)(1)(i) and (iii), as well as the other gear requirements specified in paragraphs (c)(2) and (3) of that section.

(4) *VMS.* A vessel issued a Category F permit must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(f) *Transiting.* A vessel issued a Category F permit and fishing under a monkfish DAS that is transiting to or from the Offshore Fishery Program Area, described in paragraph (c)(1) of this section, shall have all gear stowed and not available for immediate use in accordance with the gear stowage provisions described in § 648.23(b).

(g) *Monkfish possession limits and DAS allocations.* (1) A vessel issued a Category F permit may land up to 1,600 lb (726 kg) tail-weight or 5,312 lb (2,409 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor of 3.32 times tail-weight).

(2) The monkfish DAS allocation for vessels issued a Category F permit shall be based on a proration of the trip limit applicable to the vessel's monkfish limited access permit category in relation to the fixed daily possession limit specified in paragraph (g)(1) of this section multiplied by the DAS allocation for limited access monkfish vessels not issued Category F permits, specified under § 648.92(b)(1). For example, if a vessel has a limited access monkfish Category C permit, and the applicable trip limit is 800 lb (363 kg) for this category, and the vessel has an annual allocation of 40 monkfish DAS, then the monkfish DAS allocated to that vessel when issued a Category F permit would be 20 monkfish DAS (800 lb / 1,600 lb x 40 monkfish DAS = 20 DAS).

Any carryover monkfish DAS will be included in the proration calculation.

(3) *Incidental catch limit when fishing under a multispecies DAS in the NFMA.* Vessels issued a Category F permit that are fishing under a multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(h) *DAS usage by NE multispecies or sea scallop limited access permit holders.* A vessel issued a Category F permit that also has been issued either a NE multispecies or sea scallop limited access permit, and is fishing on a monkfish DAS, is subject to the DAS usage requirements specified in § 648.92(b)(2).

15. In § 648.96, paragraph (c)(1)(i) is revised to read as follows:

**§ 648.96 Monkfish annual adjustment process and framework specifications.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(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, other 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; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that

minimize bycatch or bycatch mortality; transferable DAS programs; and other frameworkable measures included in § 648.55 and 648.90.

\* \* \* \* \*

16. Section 648.97 is added to read as follows:

**§ 648.97 Closed areas.**

(a) Oceanographer Canyon Closed Area. No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Oceanographer Canyon Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

**OCEANOGRAPHER CANYON CLOSED AREA**

Point	N. Lat.	W. Long.
OC1	40°10'	68°12'
OC2	40°24'	68°09'
OC3	40°24'	68°08'
OC4	40°10'	67°59'
OC1	40°10'	68°12'

(b) *Lydonia Canyon Closed Area.* No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Lydonia Canyon Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

**OCEANOGRAPHER CANYON CLOSED AREA**

Point	N. Lat.	W. Long.
LC1	40°16'	67°34'
LC2	40°16'	67°42'
LC3	40°20'	67°43'
LC4	40°27'	67°40'
LC1	40°27'	67°38'
LC1	40°16'	67°34'

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