

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 050304060–5060–01; I.D. 030105A]

RIN 0648–AS72

**Fisheries of the Northeastern United States; Monkfish Fishery**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to establish target total allowable catch (TAC) levels for the monkfish fishery for the 2005 fishing year (FY), and adjust trip limits for limited access monkfish vessels fishing in the Southern Fishery Management Area (SFMA) based upon the annual target TAC setting and trip limit adjustment methods established in Framework Adjustment 2 (Framework 2) to the Monkfish Fishery Management Plan (FMP). The proposed action is necessary to comply with the rebuilding plan established in the FMP and modified in Framework 2. The target TACs for FY 2005, based upon the target TAC setting method, would be 13,160 mt for the Northern Fishery Management Area (NFMA), and 9,673 mt for the SFMA. This action would also adjust the trip limits for vessels fishing in the SFMA, in accordance with the trip limit analysis method established in Framework 2, to be 700 lb (318 kg) tail weight per day-at-sea (DAS) for limited access Category A and C vessels, and 600 lb (272 kg) tail weight per DAS for limited access Category B and D vessels. The intent of this action is to eliminate overfishing and rebuild the monkfish resource in accordance with Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act) requirements.

**DATES:** Comments must be received by 5 p.m. on April 4, 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 [2005monkfish@noaa.gov](mailto:2005monkfish@noaa.gov). Include in the subject line the following “Comments on the Proposed Rule for the 2005 Monkfish Annual Adjustment.”
- 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 the 2005 Monkfish Annual Adjustment.”
- Facsimile (fax): Comments submitted by fax should be faxed to (978) 281–9135.

Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), prepared for this action are available upon request from Paul Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA, 01950. The document is also available online at [www.nefmc.org](http://www.nefmc.org).

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

**SUPPLEMENTARY INFORMATION:**

**Background**

The monkfish fishery is jointly managed by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC), with the NEFMC having the administrative lead. Framework 2 to the FMP, which became effective on May 1, 2003 (68 FR 22325;

April 28, 2003), implemented a method to set the annual target TAC. This method is based upon the relationship between the 3–year running average of NMFS’s fall trawl survey biomass index (3–year average biomass index) and established annual biomass index targets (annual index target). The annual index targets are based on 10 equal increments between the 1999 biomass index (the start of the rebuilding program) and the biomass target ( $B_{target}$ ), which is to be achieved by 2009 according the rebuilding plan established in the FMP. According to this target TAC setting method, annual target TACs are set based on the ratio of the current 3–year average biomass index to the annual index target applied to the monkfish landings for the previous fishing year. Since the stock rebuilding program established in Framework 2 is based on established formulas for calculating TACs, trip limits, and DAS allocations, the Councils had no discretion to evaluate alternatives relative to this program for FY 2005.

The Monkfish Monitoring Committee reviewed the fall trawl survey biomass indices and monkfish landings for FY 2003, and calculated the target TACs for FY 2005 in accordance with the procedures established in Framework 2. According to these procedures, if the current 3–year average biomass index is below the annual index target, then the target TAC for the upcoming fishing year is set equivalent to the monkfish landings for the previous fishing year, minus the percentage difference between the 3–year average biomass index and the annual index target. Based on the information presented in Table 1, the current 3–year average biomass indices are less than the current targets for both management areas. Therefore, the proposed FY 2005 target TAC for the NFMA is 13,160 mt (6.02 percent less than FY 2003 landings), and the proposed FY 2005 target TAC for the SFMA is 9,673 mt (18.26 percent less than FY 2003 landings).

TABLE 1. CALCULATION OF 2005 TARGET TACS.

Management Area	FY 2003 Landings (mt)	2004 3–year Average (kg/tow)	2004 Bio-mass Target (kg/tow)	% Below Biomass Target	2005 Target TAC (mt)
NFMA	14,004	1.56	1.66	6.02 %	13,160
SFMA	11,834	0.94	1.15	18.26 %	9,673

This action does not propose any changes to the management measures for limited access monkfish vessels fishing in the NFMA, since such

changes are unnecessary in order to achieve the proposed target TAC for FY 2005. Currently, limited access monkfish vessels fishing exclusively in

the NFMA are not subject to a monkfish trip limit when fishing under either a monkfish or a Northeast (NE) multispecies DAS. However, it is

unlikely that vessels fishing in the NFMA would exceed the proposed target TAC of 13,160 mt, since this target TAC is less than 900 mt below the 2003 landings, and the reduction in NE multispecies DAS allocations under Amendment 13 to the NE Multispecies FMP, implemented in FY 2004, is expected to further constrain monkfish landings. In fact, current FY 2004 monkfish landings (preliminary) for May through September are 3,913 mt for the NFMA, which is 70 percent of the May through September landings for the NFMA for FY 2003 (5,551 mt). If current FY 2004 and future FY 2005 landings continue to follow the same trajectory, expected landings of approximately 10,000 mt would be well below the FY 2004 and proposed FY 2005 target TACs. However, if changes to the management measures for the NFMA were required to prevent the target TAC from being exceeded, a separate regulatory action would be required, since changes to management measures in the NFMA are currently not authorized under the annual adjustment procedures specified under 50 CFR 648.96(b).

For the SFMA, this action proposes to restore the DAS available to limited access monkfish vessels fishing in the SFMA, but adjust the trip limits to correspond to the proposed target TAC. Framework 2 established a procedure for the SFMA that requires either the DAS or the trip limits to be adjusted as follows: (1) For years in which the target TAC is less than 8,000 mt, the trip limits will be held constant at 550 lb (250 kg) (for Category A and C vessels) and 450 lb (204 kg) (for Category B and D vessels), and the available DAS will be reduced from 40 DAS to provide the necessary reduction in landings; and (2) for years in which the target TAC is greater than 8,000 mt, the available DAS will be held constant at 40 DAS, but the trip limits will be adjusted to a level appropriate to ensure that the target TAC is not exceeded. Currently, limited access monkfish vessels are allowed to fish only 28 of their annual allocation of 40 monkfish DAS (plus carryover DAS) in the SFMA. This DAS usage restriction was implemented for FY 2004 because the target TAC of 6,772 mt was less than 8,000 mt. Because the proposed 2005 target TAC for the SFMA is above the 8,000-mt threshold, limited access monkfish vessels would be authorized to use all 40 monkfish DAS allocated annually (plus carryover DAS) in either management area under the proposed action.

To account for the proposed FY 2005 target TAC being 18 percent less than FY 2003 landings, this action proposes

to establish trip limits of 700 lb (318 kg) tail weight per DAS for limited access Category A and C vessels, and 600 lb (272 kg) tail weight per DAS for limited access Category B and D vessels. The proposed trip limits represent a 27-percent increase for Category A and C vessels, and a 25-percent increase for Category B and D vessels when compared to current FY 2004 trip limits (550 lb (250 kg) and 450 lb (204 kg)) tail weight for Category A and C, and Category B and D vessels, respectively). These trip limits were calculated using the trip limit analysis procedures established in Framework 2, and outlined in the regulations at § 648.96(b)(2).

#### Classification

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The NEFMC prepared an IRFA 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 at the beginning of this preamble and in the SUMMARY. A summary of the analysis follows:

The FMP requires that the status of the monkfish resource be reviewed on an annual basis. In addition, the measures contained in Framework 2 established an annual target TAC setting method that is based on the most recent 3-year running average of the NMFS fall trawl survey biomass index as compared to an established annual index target. Framework 2 also established a method for adjusting trip limits and DAS, as necessary, for vessels fishing in the SFMA in order to achieve the target TAC for that area. This action utilizes the target TAC setting method and the trip limit adjustment implemented in Framework 2 to establish target TACs and trip limits for FY 2005.

The regulations implementing the FMP, found at 50 CFR part 648, subpart F, authorize the Council to adjust the management measures as needed in order to achieve the goals of the FMP. Framework 2 adjusted FMP management measures by establishing a streamlined process for setting annual target TACs, and for adjusting trip limits and DAS allocations, as needed, to achieve those target TACs. The objective

of this action is to achieve the goals of the FMP through the application of the target TAC setting method established in Framework 2 for FY 2005.

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses (\$3.5 million in gross sales). There are approximately 737 limited access monkfish permit holders, including permits held in confirmation of permit history. This action would affect only limited access monkfish vessels while fishing for monkfish in the SFMA, since no changes to the management measures for the NFMA are proposed. Based on activity reports for FY 2003 (the most recent fishing year for which complete information is available), there were 534 limited access permit holders participating in the monkfish fishery. Of these, 158 vessels fished for monkfish exclusively in the SFMA, while 235 vessels fished for monkfish in both management areas. Thus, the proposed measures would likely affect at least the 393 vessels that fished for monkfish for at least part of the fishing year in the SFMA, but would likely have the greatest effect on the 158 vessels that fished for monkfish exclusively in the SFMA.

The combined target TAC for both monkfish management areas would be decreased by approximately 3 percent compared to fishing year 2004. While the target TAC for the NFMA would be decreased by approximately 22 percent, the target TAC for the SFMA would be increased by nearly 43 percent. As a result of the increased target TAC for the SFMA, monkfish trip limits in the SFMA would be increased by approximately 30 percent. Furthermore, since the target TAC for the SFMA has been set at a level greater than the 8,000-mt threshold, below which DAS reductions are triggered, allowable DAS that may be fished in the SFMA would be increased back to the full 40-day allotment. Thus, the proposed measures would have differential impacts on participating vessels depending on the management area in which they fish.

A trip limit model was used to estimate the impact of the proposed SFMA trip limits on the average per trip return for vessels on monkfish trips. Based on this analysis, on average, a trip taken in the SFMA would produce 21.2 percent more income towards fixed costs, debt, and owner profit under the proposed trip limits for FY 2005 as compared to FY 2004 trip limits. In addition, net pay per crew member would be increased by an average of 20.8 percent per trip.

As previously stated, vessels fishing in the NFMA would not be affected by the proposed measures for the SFMA. The average impact on vessels fishing in both management areas was estimated to be approximately a 2-percent increase in both net pay to crew and net return to the vessel. However, the average impact on vessels fishing exclusively in the SFMA was estimated to be a 14-percent increase in net pay to the crew, and a 12-percent increase in returns to the vessel owner. These effects vary greatly between states, with vessels from NC and NY experiencing small increases relative to vessels from MA and NJ.

The annual target TAC setting method established in Framework 2 is based on a formula that integrates an annual biomass index target with the 3-year running average of the NMFS fall trawl survey and the monkfish landings for the previous fishing year. Therefore, the target TACs resulting from the application of this method are non-discretionary. As a result, there are no alternatives to the proposed action to establish target TACs of 14,004 mt for the NFMA and 11,834 mt for the SFMA, other than no action. Furthermore, Framework 2 also established an formulaic method for adjusting trip limits for the SFMA that is based on the distribution of monkfish landings used by limited access monkfish vessels.

Thus, there are no alternatives to the proposed trip limits of 700 lb (318 kg) per DAS for limited access Category A and C vessels, and 600 lb (272 kg) per DAS for limited access Category B and D vessels, other than no action.

This proposed rule does not duplicate, overlap or conflict with other Federal rules, and does not contain new reporting or recordkeeping requirements.

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

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 11, 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.*

**§ 648.92 [Amended]**

2. In § 648.92, paragraph (b)(1)(ii) is removed and reserved.

3. In § 648.94, paragraphs (b)(2)(i) and (ii) are revised to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) *Category A and C vessels.* Category A and C vessels fishing under the monkfish DAS program in the SFMA may land up to 700 lb (318 kg) tail weight or 2,324 lb (1,054 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 and D vessels.* Category B and D vessels fishing under the monkfish DAS program in the SFMA may land up to 600 lb (272 kg) tail weight or 1,992 lb (904 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).

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