

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 050304060–5106–02; I.D. 030105A]

RIN 0648–AS72

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements measures to establish target total allowable catch (TAC) levels for the monkfish fishery for the 2005 fishing year (FY), and adjust trip limits and days-at-sea (DAS) for limited access monkfish vessels fishing in the Southern Fishery Management Area (SFMA). Based on formulas established in Framework Adjustment 2 (Framework 2) to the Monkfish Fishery Management Plan (FMP), this final rule establishes FY 2005 target TACs of 13,160 mt for the Northern Fishery Management Area (NFMA), and 9,673 mt for the SFMA; and adjusts the trip limits for limited access monkfish vessels fishing in the SFMA to 700 lb (318 kg) tail weight per DAS for limited access Category A, C, and G vessels, and 600 lb (272 kg) tail weight per DAS for limited access Category B, D, and H vessels. This action also announces that the FY 2005 DAS available to all monkfish limited access vessels will be 39.3 DAS as a result of a DAS set-aside program implemented in Amendment 2 to the FMP.

**DATES:** Effective May 1, 2005.

**ADDRESSES:** 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 (NEFMC), 50 Water Street, Newburyport, MA, 01950. The document is also available online at <http://www.nefmc.org>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the classification section of this rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive,

Gloucester, MA 01930–2298, and on the Northeast Regional Office's website at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Allison 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**

Regulations implementing the FMP appear at 50 CFR part 648, subparts A and F. Regulations that set out the annual adjustment process are found at § 648.96. The FMP requires that the Monkfish Monitoring Committee (MFMCC) recommend to the Mid-Atlantic Fishery Management Council (MAFMC) and the NEFMC, on an annual basis, target TACs for the NFMA and SFMA, and adjustments in DAS allocations and trip limits for limited access vessels fishing in the SFMA.

The annual target TAC-setting method that was implemented through Framework 2 to the FMP (68 FR 22325; April 28, 2003) is based on a ratio of the observed biomass index (NMFS 3-year average fall trawl survey biomass index) to the annual biomass targets (annual index targets) applied to the monkfish landings for the previous fishing year. The 2004 3-year average biomass index is below the 2004 biomass target (see Table 1). Therefore, according to the process established under Framework 2, the FY 2005 target TAC has been set proportionally below the 2003 FY landings (the most recent fishing year for which complete landing information is available). Once the annual target TACs are established, trip limits and/or DAS are adjusted accordingly, using the methodology established in Framework 2. 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 ( $B_{\text{target}}$ ), which is to be achieved by 2009 according to the rebuilding plan established in the FMP.

A proposed rule was published in the **Federal Register** on March 18, 2005 (70 FR 13156), with public comment accepted through April 4, 2005. The measures contained in this final rule are unchanged from those published in the proposed rule with the exception of changes in the regulatory text that reflect the addition of two new permit categories (Categories G and H), which are explained in the final rule that implemented Amendment 2 to the FMP (Amendment 2) published elsewhere in this issue of the **Federal Register**. In addition, the preamble of the proposed rule for this action indicated that DAS would be held constant in FY 2005 at

40 monkfish DAS. However, Amendment 2 also implements a set-aside of 500 DAS for monkfish research, reducing the total DAS allocated per vessel to 39.3 DAS for FY 2005. A complete discussion of the methods used to establish the target TACs, trip limits, and DAS restrictions for FY 2005 appeared in the preamble to the proposed rule and is not repeated here.

This action establishes annual target TACs of 13,160 mt for the NFMA, and 9,673 mt for the SFMA for FY 2005. In addition, this action adjusts the trip limits for vessels fishing in the SFMA to 700 lb (318 kg) tail weight per DAS for limited access Category A, C, and G vessels, and 600 lb (272 kg) tail weight per DAS for limited access Category B, D, and H vessels. In order to prevent exceeding the target TAC for the SFMA, this action adjusts the FY 2005 trip limits for monkfish limited access vessels fishing in the SFMA, and initially allocates 40 DAS to all limited access permit holders. As stated above, these DAS are then reduced by less than 1 DAS per vessel to provide for the 500 DAS research set-aside approved under Amendment 2 to the FMP, leaving a final 2005 FY allocation of 39.3 DAS to all categories of monkfish limited access permit holders, with the exception of Category F, which is explained below.

Under Amendment 2 to the FMP, limited access monkfish permit holders with Category A, B, C, or D permits may elect, on an annual basis, to change to a Category F permit. Under the provisions of Amendment 2, Category F permits allow limited access monkfish vessels to fish under a 1,600-lb (726-kg) trip limit in the SFMA Offshore Fishery Program Area in exchange for a reduced DAS allocation. Category F permit DAS are reduced proportionally from the DAS allocated to Category A, B, C, and D permits, according to the ratio of the SFMA trip limit that would otherwise be in effect for that category permit to the 1,600-lb (726-kg) Category F permit trip limit. For example, in FY 2005, and assuming no carryover DAS, Category A and C permit holders who elect to switch to a Category F permit would be authorized to fish 17.2 DAS, and Category B and D permit holders would be authorized to fish 14.7 DAS. Any carryover DAS available to the permit holder would be factored into the proration and would affect the number of DAS ultimately authorized.

The trip limits in the NFMA are unchanged by this action. However, if changes to the management measures in the NFMA were required to ensure that the TAC would not be exceeded, they would be outside the scope of the current rulemaking.

The target TAC setting process, and the trip limit and DAS adjustment procedures established in Framework 2, cannot be changed by this action. A change to these procedures would require further action on behalf of the Councils in the form of a framework adjustment or an amendment to the FMP. The regulations governing framework adjustments to the FMP, specified at § 648.96(c)(3), require at least one initial meeting of the Monkfish Oversight Committee or one of the Councils, and at least two Council meetings, one at each of the MAFMC and the NEFMC. Because this action is being taken in accordance with the annual adjustment procedures for the monkfish fishery specified at § 648.96(b), such meetings are not required, and, therefore, were not conducted.

#### Comments and Responses

No public comments were received on the proposed rule.

#### Changes From the Proposed Rule

In § 648.94, paragraph (b)(2)(i) is revised to include new limited access permit category G, and paragraph (b)(2)(ii) is revised to include new limited access permit category H, as provided for in the final rule implementing Amendment 2 to the FMP.

#### Classification

The Administrator, Northeast Region, NMFS (Regional Administrator), determined that this action to establish target TACs, trip limits, and DAS for the 2005 monkfish fishery is necessary for the conservation and management of the monkfish fishery, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law.

As explained below, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness date due to unavoidable time constraints required by the Magnuson-Stevens Act in the approval and implementation of Amendment 2 to the FMP. This action establishes annual measures (TACs, trip limits, DAS) for the monkfish fishery for fishing year 2005 (May 1, 2005, to April 30, 2006). However, implementation of this action could not occur until after implementation of Amendment 2 to the FMP, which contained several more substantial changes to the management system for the monkfish fishery. Following the transmittal of Amendment 2 from the Councils to NMFS, a Notice of Availability on the Amendment was published in the

**Federal Register** on January 3, 2005. The Magnuson-Stevens Act requires at least a 60-day public comment period on the Amendment. The approval date for the Amendment was scheduled for April 2, 2005, 30 days following the end of the public comment period. Amendment 2 was partially approved on March 30, 2005. According to the requirements of the Magnuson-Stevens Act, the final rule to implement Amendment 2 is to be published no later than 30 days following the Amendment's approval. The final rule to implement Amendment 2 is published elsewhere in this issue of the **Federal Register**. Because publication of this rule is dependent upon the publication of the final rule to implement Amendment 2, publication of this rule was necessarily delayed while the final rule implementing Amendment 2 followed the requirements of the Magnuson-Stevens Act. Thus, publication of this rule could not have occurred any earlier than this time. In order to implement this final rule before the start of the 2005 fishing year, the Assistant Administrator finds good cause to waive the 30-day delay in effectiveness.

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

#### Final Regulatory Flexibility Analysis

This section constitutes the FRFA, which NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared in support of this action. The FRFA describes the economic impact that this final rule will have on small entities. This FRFA incorporates the IRFA, any comments received on the proposed rule, NMFS's responses to those comments, and the analyses completed to support the action. There are no Federal rules that may duplicate, overlap, or conflict with this final rule. A copy of the IRFA is available from the NEFMC (see **ADDRESSES**).

#### Statement of Objective and Need

A description of the reasons why action by the agency is being taken and the objectives of this action are explained in the preamble of the proposed rule and this final rule and are not repeated here. This action is taken under the authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

#### Summary of Significant Issues Raised in Public Comments

No public comments were received on the proposed rule or on the economic analyses summarized in the IRFA.

#### Description and Estimate of Number of Small Entities to Which this Rule Will Apply

This action will impact approximately 393 limited access monkfish permit holders that fish all or part of the fishing year in the SFMA, based on vessel landings for the 2003 FY. Of these 393 permit holders, 158 fished exclusively in the SFMA, and are likely to be most affected by this action. All of these vessels are considered small entities under the Small Business Administration's size standards for small fishing businesses (less than \$3.5 million in gross annual sales) and, therefore, there is no disproportionate impact of the regulations between large and small entities.

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements.

#### Description of the Steps Taken to Minimize Economic Impacts on Small Entities

The target TAC setting alternative adopted in Framework 2 to the FMP, and utilized in this action, is less precautionary than the other alternatives considered in Framework 2, but minimizes impacts to small entities to the greatest extent. This target TAC setting method minimizes impacts to small entities because it enables the NEFMC and MAFMC to increase the target TAC in response to an increase in monkfish stock biomass, in the absence of a reliable estimate of fishing mortality (F), but with a cap on that increase. This potential for increased fishing opportunities maximizes the overall benefits to the fishing industry.

Framework 2 considered other alternatives to the formulaic method that was chosen to establish annual TACs for monkfish. Therefore, there is no discretion through this annual adjustment process for considering other alternatives or associated management measures. The annual target TAC setting method established in Framework 2 compares annual biomass targets with a 3-year running average of the NMFS fall trawl survey. If the trawl survey biomass index is less than the annual target, as is the case for FY 2004, the target TAC in the subsequent year (FY 2005) is set to equal the monkfish landings for the previous fishing year (FY 2003), minus the percentage difference between the 3 year average biomass index and the annual index target (see Table 1).

Another option in Framework 2 was considered that would have compared the current F in relation to the fishing mortality threshold (Fthreshold) for establishing 2004 target TACs. This option was determined to be unreasonable because current estimates of F are too imprecise to set target TACs and make a status determination regarding overfishing. Framework 2 also established a formulaic method for adjusting trip limits and DAS for limited access monkfish vessels fishing in the SFMA which is based on a threshold target TAC. Therefore, there are no

alternatives to the trip limits that are to be implemented for FY 2005 under this annual adjustment process.

**Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall

explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all vessels issued a limited access monkfish permit, and to all Federal dealers issued a monkfish permit. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and are also available at the following web site: <http://www.nero.noaa.gov>.

TABLE 1. CALCULATION OF 2005 TARGET TACs.

Management Area	FY 2003 Landings (mt)	2004 3-year Average (kg/tow)	2004 Biomass Target (kg/tow)	Percent 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

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 22, 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 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, C, and G vessels.*

Category A, C, and G 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, D, and H vessels.* Category B, D, and H 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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