

13132 (“Federalism”). This final rule would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125 (b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (i) The designation, description, and classification of hazardous materials;
- (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (iii) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (v) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (i), (ii), (iii), and (v) above and preempts State, local, and Indian tribe requirements not meeting the “substantively the same” standard. This final rule is necessary to update, clarify, and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA has determined that the effective date of Federal preemption for these requirements will be 1 year from the date of publication of a final rule in the **Federal Register**.

#### D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order

13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

#### E. Regulatory Flexibility Act, Executive Order 13272, and DOT Regulatory Policies and Procedures

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule will not impose increased compliance costs on the regulated industry. The revisions we are making to the January 23, 2007 final rule will provide regulatory relief to persons offering lighters and lighter refills for transportation in commerce by reinstituting limited quantity and consumer commodity exceptions for lighter refills and permitting immediate voluntary compliance with certain provisions of the final rule. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

#### F. Paperwork Reduction Act

PHMSA currently has an approved information collection under Office of Management and Budget (OMB) Control Number 2137–0557, “Approvals for Hazardous Materials,” with an expiration date of June 30, 2007. This final rule imposes no new information collection and recordkeeping requirements.

#### G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the

Unfunded Mandates Reform Act of 1995. It will not result in costs of \$120.7 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

#### I. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit <http://dms.dot.gov>.

#### List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

■ In consideration of the foregoing, we are making the following correction to rule FR Doc. 06–464, published on January 23, 2006 (71 FR 3418):

#### § 173.306 [Corrected]

■ 1. On page 3427, in the middle column, correct amendatory instruction 12.a. to read “a. In paragraph (a)(1), in the last sentence, the wording “paragraph (h)” is removed and the wording “paragraph (i)” is added in its place.”

Issued in Washington, DC on April 10, 2006 under authority delegated in 49 CFR part 1.

**Brigham A. McCown,**  
Acting Administrator.

[FR Doc. 06–3834 Filed 4–24–06; 8:45 am]  
BILLING CODE 4910–60–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 060315071–6101–02; I.D. 030906C]

**RIN 0648–AT22**

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

**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 2006 fishing year (FY), and adjusts trip limits and establishes days-at-sea (DAS) restrictions for limited access monkfish vessels fishing in the Southern Fishery Management Area (SFMA) based upon the annual target TAC setting, trip limit, and DAS adjustment methods established in Framework Adjustment 2 (Framework 2) to the Monkfish Fishery Management Plan (FMP). The action is necessary to comply with the rebuilding plan established in the FMP and modified in Framework 2. The intent of this action is to help eliminate overfishing and rebuild the monkfish resource in accordance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements.

**DATES:** Effective May 1, 2006.

**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, e-mail [Allison.Ferreira@noaa.gov](mailto:Allison.Ferreira@noaa.gov), phone (978) 281-9103, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

Framework Adjustment 2 to the FMP, which became effective on May 1, 2003 (68 FR 22325; April 28, 2003), implemented a method for setting the annual target TACs. 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). Once the annual target TACs are established, trip limits and/or DAS are adjusted accordingly, using a set of procedures established in Framework 2.

The FMP, as modified by Framework 2, requires that the Monkfish Monitoring Committee (MFMC) recommend to the NEFMC and the Mid-Atlantic Fishery Management Council (MAFMC), on an annual basis, target TACs for the Northern Fishery Management Area (NFMA) and SFMA. The MFMC reviewed the fall trawl survey biomass indices and monkfish landings for FY 2004, and calculated the target TACs for FY 2006 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 (e.g., FY 2006) is set equivalent to the monkfish landings for the previous fishing year (e.g., FY 2004), 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 FY 2006 target TAC for the NFMA is 7,737 mt (33.7 percent less than FY 2004 landings), and the FY 2006 target TAC for the SFMA is 3,667 mt (39.7 percent less than FY 2004 landings).

TABLE 1. CALCULATION OF 2006 TARGET TACs

Management Area	FY 2004 Landings (mt)	2005 3-year Average (kg/tow)	2005 Biomass Target (kg/tow)	Percent Below Target	2006 Target TAC (mt)
NFMA	11,666	1.214	1.83	33.7 %	7,737
SFMA	6,078	0.778	1.29	39.7 %	3,667

This action does not implement any changes to the management measures for limited access monkfish vessels fishing in the NFMA because the annual adjustment procedure specified in the regulations at § 648.96(b) applies only to the SFMA. At the time Framework 2 was developed and implemented, the monkfish resource was well above the biomass threshold established for the NFMA. However, recent restrictions on fishing effort in the Northeast (NE) multispecies fishery, implemented through Amendment 13 to the NE Multispecies FMP, have helped constrain monkfish effort in the NFMA. In fact, monkfish landings during FY 2004 were only 69 percent of the FY 2004 target TAC for that management area. Furthermore, additional effort restrictions in the NE multispecies

fishery to be implemented during FY 2006 (through the emergency Secretarial action and joint NE Multispecies Framework 42/Monkfish Framework 3) are expected to further constrain monkfish landings.

Framework 2 also established an adjustment procedure for the SFMA that requires either the DAS or the trip limits to be adjusted, based on whether the target TAC is less than or greater than 8,000 mt (the approximate target TAC level that would result in the 550 and 450 lb (249 and 204 kg) tail weight trip limits). Since this action establishes a target TAC for the SFMA that is well below 8,000 mt, it will reduce the trip limits for vessels fishing in the SFMA to 550 lb (249 kg) tail weight per DAS for limited access Category A, C, and G vessels, and 450 lb (204 kg) tail weight

per DAS for limited access Category B, D, and H vessels, and also restrict the FY 2006 DAS available for monkfish limited access vessels fishing in the SFMA to 12 monkfish DAS (plus up to 10 carryover DAS). The number of DAS available to limited access monkfish vessels fishing in the SFMA during FY 2006 was calculated using the analysis procedures established in Framework 2, and outlined in the regulations at § 648.96(b)(3).

This action also notifies limited access monkfish vessels of the monkfish DAS proration for vessels participating in the Offshore Fishery Program in the SFMA, as required by § 648.95(g). The Offshore Fishery Program, which was established through Amendment 2 to the FMP (70 FR 21927; April 28, 2005), authorizes limited access monkfish

permit holders with Category A, B, C, or D permits to elect, on an annual basis, to participate in a designated offshore monkfish fishery in the SFMA by obtaining a Category F permit for the fishing year. Under this program, participants are allowed a higher daily possession limit of 1,600 lb (726 kg) tail weight per DAS in exchange for a reduced monkfish DAS allocation. Monkfish DAS for limited access Category A and C vessels that participate in this program during FY 2006 are adjusted by a factor of 0.344, equal to 4.1 DAS, based on the 12 DAS restriction, and limited access Category B and D vessels are adjusted by a factor of 0.281, equal to 3.4 DAS, based on the 12 DAS restriction. Any carryover DAS available to the permit holder is to be factored into this calculation.

#### Comments and Responses

One public comment was received on the proposed rule.

*Comment 1:* One commenter requested that NMFS cut the target TACs for both management areas in half.

*Response:* Framework 2 specified a target TAC setting method based upon a series of annual biomass index targets that gradually increase to achieve the biomass target established in the FMP. Since monkfish stocks in both management areas are behind in their respective rebuilding schedules, the application of the target TAC setting method implemented in Framework 2 for FY 2006 has resulted in target TACs that are about one-half the target TACs established for FY 2005. Specifically, the FY 2006 target TAC for the NFMA represents a 41-percent decrease from the FY 2005 target TAC, while the FY 2006 target TAC for the SFMA represents a 62-percent decrease from the FY 2005 target TAC.

#### Classification

The Administrator, NE Region, NMFS (Regional Administrator), determined that this action to establish target TACs, trip limits, and DAS restrictions for the 2006 monkfish fishery is necessary for the conservation and management of the monkfish fishery, and that it is consistent with the Magnuson-Stevens Act and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30 day delay in effectiveness of this final rule. This action establishes annual measures (target TACs, trip limits, DAS restrictions) for the monkfish fishery for FY 2006 (May 1, 2006 to April 30, 2007) that are more restrictive than the measures currently in effect for FY 2005. Failure to implement these

measures in a timely manner will enable the monkfish resource to be overharvested since it would delay implementation of reduced trip limits and DAS restrictions for vessels fishing in the SFMA for up to 30 days beyond the start of the fishing year. Vessels that fish for monkfish in the SFMA are typically highly active during the month of May, using a large portion of their allocated monkfish DAS. This is due to the fact that monkfish are readily available during this time of year as a result of their annual spring migratory pattern. Therefore, any delay in implementation beyond the start of the fishing year would provide limited access monkfish vessels with the ability to use more than the 12 monkfish DAS being authorized for the SFMA under this final rule, resulting in an increase in fishing effort and enabling overharvest of the target TAC for this management area to occur. Any overharvest of the target TAC for the SFMA would result in negative impacts to the monkfish resource as a whole since stocks in both management areas are well behind the rebuilding schedules established in the FMP. Furthermore, this action could not be implemented earlier due to the lateness in the availability of the NMFS fall trawl survey data necessary for the calculation of the annual target TACs for the monkfish fishery, and the lateness in submission of this action by the NEFMC. A draft version of the EA/RIR/IRFA was made available to NMFS for review on February 13, 2006. The final version of the EA/RIR/IRFA was made available to NMFS and the public, through posting of the document on the NEFMC's website, on March 10, 2006. In order to implement this final rule before the start of FY 2006 and prevent any negative impacts to the monkfish resource, such as overharvesting of the target TAC for the SFMA, resulting from a delay in implementation, the Assistant Administrator (AA) finds good cause to waive the 30-day delay in effectiveness.

The NEFMC prepared an EA for this action and the AA concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA is available from the NEFMC (see ADDRESSES).

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

One public comment was received on the proposed rule, but it did not pertain to the economic analyses summarized in the IRFA. The comment and the agency's response to that comment are provided in the preamble of this final rule.

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

This action will impact approximately 325 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 325 permit holders, 151 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. Because the monkfish stocks in both management areas are behind in their respective rebuilding schedules, this action will reduce the target TACs in both management areas, resulting in reductions in trip limits and DAS available to vessels that fish in the SFMA. Therefore, because Framework 2 established methods for calculating annual target TACs, trip limits, and DAS restrictions, there are no alternatives to the target TACs, trip limits, and DAS restrictions being implemented for FY 2006 under this annual adjustment process.

Framework 2 considered other alternatives to the formulaic method that was chosen to establish annual TACs for monkfish. 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 2005, the target TAC in the subsequent year (FY 2006) is set to equal the monkfish landings for the previous fishing year (FY 2004), minus the percentage difference between the 3 year average biomass index and the annual index target (see Table 1). Another option considered in Framework 2 would have compared the current F in relation to Fthreshold for establishing annual 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.

#### 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>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 20, 2006.

**William T. Hogarth,**

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

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

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.92, paragraph (b)(1)(ii) is added to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) FY 2006 DAS restrictions for vessels fishing in the SFMA. For the 2006 fishing year, limited access monkfish vessels are restricted to utilizing only 12 of their 40 monkfish DAS allocation in the SFMA. If a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS will presume that any monkfish DAS used was fished in the SFMA.

\* \* \* \* \*

■ 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 550 lb (249 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).

\* \* \* \* \*

[FR Doc. 06-3908 Filed 4-20-06; 4:01 pm]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 060216045-6045-01; I.D. 041906C]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal allowance of the 2006 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 20, 2006, through 1200 hrs, A.l.t., May 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal allowance of the 2006 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 195 metric tons as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).