

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

[Docket No. 070312058-7058-01; I.D. 020507A]

RIN 0648-AU34

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Framework Adjustment 4

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to implement new management measures for the monkfish fishery through Framework Adjustment 4 (Framework 4) to the Monkfish Fishery Management Plan (FMP). Due to concerns over the status of the monkfish resource and the fact that monkfish is nearing the end of the rebuilding program, NMFS intends to delay making a decision on Framework 4 until the results of an upcoming monkfish stock assessment are available in July 2007. Since a decision on Framework 4 would be delayed beyond the start of the fishing year, NMFS is proposing two options for interim management measures for the start of the fishing year on May 1, 2007, that are partially based on the information and management measures contained in Framework 4: Implement the proposed target total allowable catch (TAC), trip limits, and days-at-sea (DAS) contained in Framework 4 for the Northern Fishery Management Area (NFMA), but maintaining the fishing year (FY) 2006 target TAC, trip limits, and DAS for the Southern Fishery Management Area (SFMA); or implement the proposed target TAC, trip limits, and DAS contained in Framework 4 for the NFMA, but close the directed monkfish fishery in the SFMA. In addition, the proposed interim rule would temporarily implement Framework 4 measures that have been determined not to result in any additional negative biological effects. The intent of these proposed actions 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 on the proposed Framework 4 measures must be received by 5 p.m. on April 19, 2007. Comments on the proposed interim measures must be received by 5 p.m. on April 4, 2007.

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

- *E-mail:* E-mail comments for Framework 4 may be submitted to monkfishFW4@noaa.gov. Include in the subject line the following "Comments on the Proposed Rule for Framework Adjustment 4." Email comments for the proposed interim rule to the Monkfish FMP may be submitted to monkfish-interim07@noaa.gov. Include in the subject line the following "Comments on Proposed Monkfish Interim Measures."

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>.

- *Mail:* Comments submitted by mail should be sent to Patricia A. Kurkul, Administrator, Northeast Region, NMFS (Regional Administrator), One Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on the Proposed Rule for Framework Adjustment 4 to the Monkfish FMP" if commenting on Framework 4, or "Comments on Proposed Interim Rule for the Monkfish FMP" if commenting on the proposed interim rule.

- *Facsimile (fax):* Comments submitted by fax should be faxed to (978) 281-9135.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule should be submitted to the Regional Administrator at the address listed above and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), prepared for Framework 4 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 www.nefmc.org.

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

SUPPLEMENTARY INFORMATION:**Background**

The monkfish fishery is jointly managed by the New England and Mid-

Atlantic Fishery Management Councils (Councils), with the NEFMC having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: the NFMA and the SFMA. Both stocks will be entering the final 3 years of the monkfish rebuilding plan at the start of FY 2007 on May 1, 2007. Despite early increases in stock biomass, the biomass indices for both monkfish stocks have declined in recent years and are lagging behind their respective rebuilding schedules. As a result of this decline, both stocks are again below their minimum biomass thresholds ($B_{\text{threshold}}$), and are considered to be overfished. The management measures contained in Framework 4 are intended to achieve the rebuilding objectives contained in the FMP.

The original Monkfish FMP (64 FR 54732; October 7, 1999) established a framework adjustment process that required an annual review by the Monkfish Monitoring Committee (MFMC) for the purpose of evaluating the effectiveness of the FMP with respect to meeting its conservation objectives. This annual review was a fairly general process calling for the development of target TACs for the upcoming fishing year based on the best scientific information available and consistent with the goals and objectives of the FMP. The annual review and target TAC setting process contained in the FMP was modified through the implementation of Framework Adjustment 2 (Framework 2) (68 FR 22325; April 28, 2003) to establish a more specific and prescribed process for setting annual target TACs. Specifically, Framework 2 added a target TAC setting control rule based on the ratio of a 3 year running average of the NMFS fall trawl survey biomass index to an established annual biomass index target, compared to landings from the previous year. Based on the experiences of the last several years, it has become apparent that the Framework 2 control rule may result in measures that are inconsistent with the rebuilding goals of the FMP because changes to the target TACs are based, in large part, on prior landings. As such, under this control rule, target TACs could be increased even if annual biomass rebuilding targets are not met. Based upon concerns over the Framework 2 control rule and the status of the monkfish resource with respect to the rebuilding schedule established in the FMP, the Councils initiated Framework 4 during the spring of 2006 with the intent of addressing the apparent problems with Framework 2 by eliminating the control

rule, and to establish measures consistent with the stock rebuilding goals established in the original FMP. In eliminating the Framework 2 control rule, other proposed changes to the annual adjustment process, including removal of the trip limit analysis description and modification of the DAS allocation description, are necessary to clarify and make the annual review and adjustment process more consistent with the changes being proposed in Framework 4.

Delay of Framework 4 and Implementation of Interim Measures

Due to concerns over the status of the monkfish resource and the fact that monkfish is in the seventh year of a 10-year rebuilding plan, NMFS is initiating a Stock Assessment Review Committee (SARC) and plans to hold an integrated Stock Assessment Workshop (SAW)/SARC meeting to perform a monkfish stock assessment. Results of the workshop are expected to be available in July 2007. The tasks to be performed include a determination of stock status relative to the existing biological reference points (BRPs), a review of the existing BRPs and potential revision or redefinition of the BRPs along with a stock status determination, and review and potential revision of existing control rules for rebuilding the stock relative to the recommended BRPs.

Since the upcoming SAW/SARC will occur after the start of the 2007 fishing year, NMFS intends to delay making a final decision on Framework 4 until after the results of the stock assessment are available. Instead, NMFS intends to implement precautionary interim management measures for the start of the fishing year on May 1, 2007, in accordance with section 305(c) of the Magnuson-Stevens Act, based upon the information and management measures contained in Framework 4. The purpose of the interim rule would be to implement management measures that would result in no additional negative biological impacts to the monkfish resource while NMFS has the opportunity to conduct a thorough review of the status of the monkfish resource using the best and most recent information available. NMFS is considering two options for such an interim rule: (1) Implement the proposed target TAC, trip limits, and DAS requirements contained in Framework 4 for the NFMA, but maintaining the FY 2006 target TAC, trip limits, and DAS for the SFMA; or (2) implement the proposed target TAC, trip limits, and DAS requirements contained in Framework 4 for the NFMA, but close the directed monkfish

fishery in the SFMA. This interim rule would also temporarily implement other management measures contained in Framework 4, as deemed necessary, that have been determined not to result in any additional negative biological effects. These measures include: A revision to the monkfish incidental catch limit in the NFMA, a revision to the boundary line for limited access monkfish Category H permit holders, and a revision to the monkfish incidental catch limit applicable to limited access scallop vessels fishing in the Scallop Access. Therefore, this action requests public comments on the proposed interim measures described above, and also requests public comments on the proposed measures contained in Framework 4.

Proposed Framework 4 Management Measures

1. Target TACs for the NFMA and SFMA

In addition to the proposed changes to the annual adjustment process (i.e., the removal of the Framework 2 control rule), this action would establish target TACs of 5,000 mt and 5,100 mt for the NFMA and SFMA, respectively, for the final 3 years of the rebuilding plan (FY 2007-FY 2009), unless otherwise modified by the MFMC during their annual review process. Essentially, this framework adjustment would remove the Framework 2 control rule and replace it with target TACs that were developed based upon an analysis conducted by the Monkfish Plan Development Team (PDT). The target TACs developed by the PDT incorporate a range of nine different potential methods for calculating target TACs for the monkfish fishery. These target TACs represent the PDT's best estimate of target catch levels that could facilitate stock rebuilding but maintain a limited directed monkfish fishery, and are the basis for calculating DAS allocations and trip limits for each management area. The proposed target TAC for the NFMA is 35 percent lower than the target TAC in effect for FY 2006, and 67 percent lower than the average of target TACs in effect since FY 2002. The proposed target TAC for the SFMA is 39 percent higher than the target TAC in effect for FY 2006, but is 33 percent lower than the average of the target TACs in effect since FY 2002. Therefore, both target TACs represent a decrease in overall effort since the implementation of the FMP. A copy of the target TAC analysis conducted by the PDT is contained in Appendix I of the Framework 4 document (see ADDRESSES).

Although the proposed target TACs would result in an overall decrease in

effort, the target TAC proposed for the SFMA is 1,433 mt higher than the target TAC in effect for FY 2006. Considering the status of the monkfish resource in both management areas, NMFS is concerned that any increase in effort over the status quo may delay rebuilding, preventing the rebuilding targets established in the FMP from being met by the end of the rebuilding program. NMFS is specifically seeking public comments on the proposed target TACs, with particular focus on the target TAC proposed for the SFMA.

2. DAS Requirement for the NFMA

The proposed action would require limited access monkfish vessels that are fishing in the NFMA to declare a monkfish DAS if the vessel exceeds, or is anticipating to exceed, the applicable monkfish incidental catch limit. Under this proposed measure, if the vessel is equipped with a vessel monitoring system (VMS) unit and is fishing under a NE multispecies Category A DAS in the NFMA, it may declare a monkfish DAS any time prior to crossing the VMS demarcation line upon returning to port or leaving the NFMA if the applicable monkfish incidental catch limit is exceeded during the course of the trip.

The purpose of the at-sea declaration component of this alternative is to minimize discards and promote safety. For example, if a vessel fishing for NE multispecies under a Category A DAS in the NFMA exceeds the monkfish incidental catch limit, this provision would enable the vessel to retain the additional monkfish by declaring a monkfish DAS. Otherwise, the vessel would be required to discard the additional monkfish or stay at sea long enough to account for the overage of the incidental limit, which is based on a NE multispecies DAS. The proposal to only apply this at-sea declaration provision to vessels fishing in the NFMA is a recognition of the differences in how the monkfish fishery is prosecuted in each management area, particularly in the degree of directivity (i.e., the ability to target monkfish with minimal bycatch of NE multispecies). As such, vessels holding both limited access NE multispecies and limited access monkfish permits are far more likely to exceed the monkfish incidental limit while fishing for NE multispecies on a NE multispecies DAS in the NFMA than they are in the SFMA. For these reasons, the original FMP applied different gear requirements in the two areas, and placed no restrictions on the monkfish catch on monkfish limited access vessels fishing on a NE multispecies DAS in the NFMA. For the same reasons, the need to provide limited

access monkfish vessels fishing in the NFMA with the flexibility provided by this at-sea declaration provision outweighs any potential abuse of this provision in that area, in contrast to the SFMA, where the need for such flexibility is much less, and does not outweigh the potential for abuse of this provision in that area.

3. Trip Limits and DAS Allocations for the NFMA

This action would establish an annual monkfish DAS allocation of 31 DAS for limited access monkfish vessels fishing in the NFMA. This action would also establish NFMA trip limits of 1,250 lb (567 kg) tail weight per DAS for limited access monkfish Category A and C vessels, and 470 lb (213 kg) tail weight per DAS for limited access monkfish Category B and D vessels.

4. Trip Limits and DAS Allocations for the SFMA

The proposed action would restrict limited access monkfish vessels fishing in the SFMA to 23 monkfish DAS annually. Due to the difference between the proposed DAS allocations for the NFMA and the SFMA contained in Framework 4, this action would establish an annual allocation of 31 monkfish DAS for all limited access monkfish vessels, but would restrict vessels to using no more than 23 of their allocated 31 monkfish DAS in the SFMA.

This action would also establish SFMA trip limits of 550 lb (249 kg) tail weight for limited access monkfish Category A, C, and G vessels; and 450 lb (204 kg) tail weight per DAS for limited access monkfish Category B, D, and H vessels. These are the same trip limits in effect during FY 2006.

5. Monkfish Incidental Catch Limit for the NFMA

The proposed action would reduce the monkfish incidental catch limit applicable to limited access monkfish vessels (Categories A, B, C, D, F, G, and H) and open access monkfish vessels (Category E) fishing under a NE multispecies DAS in the NFMA from 400 lb (181 kg) tail weight per NE multispecies DAS, or 50 percent of the weight of fish on board, to 300 lb (136 kg) tail weight per DAS, or 25 percent of the weight of fish on board. The proposed incidental catch limit is equivalent to that implemented in the original FMP (64 FR 54732; October 7, 1999).

6. Target TAC Overage Backstop Provision

The proposed target TACs and associated management measures are intended to remain in effect for the final 3 years of the rebuilding program. The method that has been used to calculate trip limits and DAS allocations for the SFMA since FY 2002 has proven to be effective at keeping landings at or near the annual target TACs. However, there is no assurance that the success of this method will continue, or that similar results will occur for the NFMA, where there has been no monkfish trip limit since the implementation of the FMP. As a result, the Councils have recommended a target TAC backstop provision in Framework 4 that would enable the Regional Administrator to adjust the DAS available in either or both management areas for FY 2009 if the target TACs are exceeded by between 10 and 30 percent during FY 2007. If the target TACs are exceeded by more than 30 percent, the directed monkfish fishery would be closed in FY 2009 in the area in which this overage occurred.

7. Extension of Measures Beyond FY 2009

If a subsequent regulatory action is not in place prior to the end of the rebuilding program, Framework 4 contains a provision for extending management measures beyond FY 2009. Under the proposed action, the management measures in place for FY 2009 would remain in effect, unless the target TAC overage backstop provision (see t6) results in the closure of the directed monkfish fishery during FY 2009. In this case, the management measures that would be in effect for FY 2010 and beyond would be those in effect for FY 2008 in the area where the directed fishery had been closed.

8. Revision to Boundary Line for Category H Permit Holders

This action would revise the northern boundary line applicable to limited access monkfish Category H permit holders. These vessels were allowed to enter the fishery through an extension to the monkfish limited access program established in Amendment 2 to the FMP. A total of seven vessels qualified for Category H permits under this program. Under the provisions of the program contained in Amendment 2, these vessels were restricted to fishing in the area south of 38°20' N lat. These vessels have a limited season when monkfish are available during the late spring. In addition, these vessels are constrained by sea turtle closures that

essentially restrict the fishery to an area that is 20 nautical miles (37 km) wide. As a result, in Framework 4, the Councils are recommending that the northern boundary line applicable to limited access monkfish Category H vessels be shifted 20 nautical miles (37 km) northward to 38°40' N lat. to increase the opportunity for the affected vessels to prosecute the monkfish fishery, and provide some additional area to move into, in the event that sea turtles appear in the area north of 38°00' N lat., which is the northern boundary of the sea turtle closure area.

9. Scallop Closed Area Access Program Monkfish Incidental Catch Limit

Prior to the final approval of Framework 4, representatives from the scallop industry requested that the Councils clarify their intent with respect to the monkfish incidental catch limits applicable to scallop dredge vessels fishing in the Scallop Area Access Program, since changes to the program resulting from Scallop Framework 18 changed the monkfish incidental catch limit applicable to these areas. The final rule implementing Framework 18 to the Scallop FMP removed DAS counting for vessels fishing in Area Access Program. As a result, the monkfish possession limit dropped from 300 lb (136 kg) tail weight per scallop DAS to 50 lb (23 kg) tail weight per day fished, up to a maximum of 150 lb (68 kg) tail weight in the access areas. Based on input from the scallop industry, the Councils are recommending in Framework 4 that the monkfish possession limit applicable to limited access scallop vessels fishing in the Scallop Area Access Program be increased to 300 lb (136 kg) tail weight per day fished within the access area, not to include steaming time.

Classification

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

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

An initial regulatory flexibility analysis (IRFA) was prepared for Framework 4, 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 and in the **SUMMARY** of this proposed

rule. A copy of this analysis is available from the NEFMC (see **ADDRESSES**). A summary of the analysis follows, but has been expanded to include the management measures being proposed for the temporary interim rule to the Monkfish FMP:

As noted in the preamble to this proposed rule, both monkfish stocks are behind their respective rebuilding schedules. As a result, it is necessary to revise the management program to ensure that the 10-year rebuilding program implemented in the FMP can be met. In addition, the retirement of the R/V Albatross will complicate the assessment of the monkfish stock condition, necessitating a change in the way the target TACs are determined. There are also concerns that reductions in multispecies fishing opportunities may lead to more directed fishing on monkfish by limited access multispecies permit holders that also possess limited access monkfish permits. As a result, it may be necessary to more closely regulate the monkfish fishery in the NFMA to ensure that stock rebuilding goals are met. The proposed action would also address the socio-economic problem created in the SFMA by the current target TAC setting method established in Framework 2, where vessels have been subjected to sometimes wide swings in target TACs and, subsequently, in annual trip limits and DAS allocations. The current method for setting target TACs has made it difficult for industry members to develop business plans and fishing strategies.

The regulations implementing the FMP, found at 50 CFR 648, subpart F, authorize the Councils to adjust management measures as needed to achieve the goals of the FMP. The objective of this action is to achieve the rebuilding goals of the FMP through adjustments to monkfish target TACs, trip limits, and DAS allocations for FY 2007 through FY 2009, and to mitigate, to the extent possible, the economic effects of the rebuilding plan. Therefore, the proposed action is consistent with the goals of the FMP and its implementing regulations.

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 (\$4 million in gross sales). Therefore, there is no disproportionate impact on small entities compared to large entities. As of October 13, 2006, there were 731 limited access monkfish permit holders and approximately 2,121 vessels holding an open access Category E monkfish permit. This action would

affect all active limited access vessels and any open access monkfish vessels that land monkfish from the NFMA.

Vessel activity reports for FY 2005 indicate that 627 limited access monkfish permit holders participated in the monkfish fishery. Of these vessels, 150 fished exclusively in the NFMA and 226 fished exclusively in the SFMA, with the remaining 251 fishing in both management areas. During the same time period, vessel activity reports indicate that 570 incidental permit holders reported landing monkfish. Of these vessels, 163 landed monkfish only from the NFMA, 344 landed monkfish only from the SFMA, and 63 landed monkfish from both management areas. The proposed measures would affect at least the 627 vessels that fished for monkfish during FY 2005 and the 226 incidental permit holders landing monkfish from the NFMA.

Economic Impacts Proposed Framework 4 Measures

1. Target TACs for the NFMA and SFMA

The proposed target TACs would affect all limited access monkfish vessels, with differential impacts depending upon the management area in which the vessels fish. The level of these impacts depends not only on the area in which the vessels fish, but also the extent to which participating vessels must change their fishing behavior due to the imposition of DAS requirements (i.e., in the NFMA), changes to current DAS allocations, or changes to current trip limits.

The combined target TACs proposed in Framework 4 would reduce overall monkfish fishing effort by 11 percent compared to FY 2006. While the proposed target TAC for the NFMA would be decreased by approximately 35 percent, the proposed target TAC for the SFMA would be increased by approximately 39 percent. The NFMA target TAC being proposed for the interim rule would be the same as the target TAC contained in Framework 4, and therefore would result in the same impacts to small entities. However, the proposed interim SFMA target TAC would be 28 percent less than the one contained in Framework 4, but equivalent to the target TAC in currently in effect for FY 2006. Therefore, the impacts to small entities resulting from the proposed interim target TAC would be similar to the impacts currently being experienced by the limited access monkfish vessels that fish in the SFMA or in both management areas. These impacts were analyzed in the IRFA prepared for the 2006 Monkfish Annual Adjustment.

The other option being considered for the SFMA is to shut down the directed fishery in this area. An analysis of the impacts to small entities of shutting down the directed monkfish fishery in both management areas is contained in the IRFA prepared for Framework 4. According to this analysis, vessels fishing only in the SFMA would experience a 4.2-percent reduction in average vessel return, a 5.3-percent reduction in average crew return, and a 57.9 percent reduction in average monkfish revenue. If the directed fishery were to be closed in both management areas, vessels that fish in both management areas would experience a 3.1-percent reduction in average vessel return, a 3.5 percent reduction in average crew return, and a 19.1-percent reduction in average monkfish return (assuming an incidental catch limit of 300 lb tail weight per DAS). If the directed fishery were only to be closed in the SFMA, it is expected that the projected impacts to vessels fishing in both areas would be slightly less.

2. DAS Requirement for the NFMA

In FY 2005, there were 233 limited access monkfish vessels that also held a limited access NE multispecies DSA permit that landed more than the existing 400-lb (181-kg) tail weight trip limit for monkfish while fishing in the NFMA. Furthermore, there were 249 such vessels that landed more than the proposed incidental catch limit of 300 lb (136 kg) tail weight. Under the proposed measures, these 249 vessels would be required to call in a monkfish DAS in the NFMA if they wish to land more than the incidental catch limit. This is a minor administrative burden, but is not expected to entail a change in fishing practices.

3. Trip Limits and DAS Alternatives

The trip limit and DAS alternatives contained in Framework 4 would impact limited access monkfish vessels fishing for monkfish in either management area, to the extent that these measures impact their normal fishing activities. The estimation of relative economic impacts was accomplished through the use of a trip limit model to estimate average changes in per-trip vessel returns net of operating costs and crew payments, and changes in monkfish revenue. That analysis uses data from observed trips to simulate outcomes under alternative trip limits and DAS allocations. Because FY 2006 data are not yet complete, the trip limit data are compiled from FY 2005 vessel trip reports and dealer weighout slips. The relative change in

net return to the vessel was estimated by calculating the average per-trip returns to the vessel owner using both the FY 2006 trip limits and the trip limits being proposed for FY 2007–FY 2009 in Framework 4.

For vessels fishing only in the NFMA, the results of the trip limit model indicate that the per trip average vessel return on monkfish trips would decline by 4.9 percent under the proposed action, with a range of 2.8 to 12 percent under the other trip limit and DAS alternatives considered. Average crew return would decline by 8.3 percent under the proposed action, with a range of 4.6 to 20.1 percent under the alternatives considered. Finally, average monkfish revenue would decline by 18.6 percent under the proposed action, with a range of 10.4 to 45.7 percent under the other alternatives considered.

For vessels fishing only in the SFMA, the results of the trip limit model indicate uniformly positive impacts due to the increase in the target TAC and resulting DAS allocation, but are likely an understatement of the true impacts due to problems with linking data sources, and assumptions concerning incidental catch limits that needed to be made in order to conduct the analysis. According to this analysis, the per trip average vessel return on monkfish trips would increase by 2.5 under the proposed action, and by 3.4 percent under the other alternative considered. Average crew return would increase by 3.4 percent under the proposed action, and by 4.6 percent under the other alternative considered. Finally, average monkfish revenue would increase by 34.1 percent under the proposed action, and by 46.9 percent under the other alternative considered. Of the alternatives considered, the results of this analysis indicate that the non-preferred alternative would have the largest positive impact on limited access monkfish vessels that fish only in the SFMA.

Vessels fishing in both the NFMA and the SFMA would be simultaneously affected by the incidental trip limit alternative selected for the NFMA, the DAS and trip limit alternative selected for the NFMA, and the DAS and trip limit alternative selected for the SFMA. While these vessels have the demonstrated ability to shift between management areas and are more likely to change fishing locations than vessels that have historically fishing in only one area, the trip limit model does not incorporate this possibility. Rather, the model assumes that vessels will continue fishing in the same locations they did previously. Overall, the ability of these vessels to shift between

management areas mitigates the impacts of changes in regulations to either area. Under the proposed action, for vessels that fish in both management areas, average per trip vessel return would decline by 0.2 percent, average crew return would decline by 0.5 percent, and average monkfish revenue would decline by 12.6 percent. Out of all the NFMA and SFMA trip limit and DAS alternatives considered, including the NFMA incidental catch limit alternatives, the best combination of these alternatives, based on the trip limit model, is the combination of a 400-lb (181-kg) incidental catch limit in the NFMA, no trip limit for directed trips and 21 DAS in the NFMA, and a 550-lb (249-kg) tail weight trip limit for monkfish limited access Category A, C, and G vessels, a 450-lb (204-kg) tail weight trip limit for Category B, D, and H vessels, and 23 DAS in the SFMA. This combination would lead to a 3.6-percent reduction in monkfish revenue, but would result in marginal increases in vessel and crew return.

The impacts to small entities of implementing the DAS requirements and trip limits proposed in Framework 4 through an interim rule would be the same as described above. However, the impacts to small entities of maintaining the same DAS restrictions and trip limits for the SFMA that are currently in effect for FY 2006 would be similar to the impacts currently being experienced by the limited access monkfish vessels that fish in the SFMA or in both management areas. These impacts were analyzed in the IRFA prepared for the 2006 Monkfish Annual Adjustment.

4. Monkfish Incidental Catch Limit for the NFMA

The proposed action would impact all monkfish vessels (limited access and open access incidental permit holders) fishing in the NFMA and landing more than the proposed trip limit of 300 lb (136 kg) tail weight, or 25 percent of the weight of fish on board. Under the proposed measure, limited access monkfish vessels would have some number of DAS that can be used to fish at more than the incidental limit and would only be constrained to the extent that they would have to reduce their monkfish landings on days fished over their monkfish DAS allocation. In FY 2005, 78.2 percent of all trips by monkfish vessels fishing in the NFMA landed less than the proposed 300-lb (136-kg) tail weight limit, while 82.4 percent of these trips landed less than the current 400-lb (181-kg) tail weight limit. Therefore, in general, most vessels would be minimally impacted by the

proposed trip limit change. However, monkfish limited access Category A and C vessels had a larger percentage of trips in excess of the current and proposed incidental catch limits. During FY 2005, only 13.2 percent of trips by monkfish limited access Category A vessels were less than 400 lb (181 kg) tail weight and 5.3 percent of trips were less than 300 lb (136 kg) tail weight. For limited access Category C vessels, 48.8 percent of the FY 2005 trips were less than 400 lb (181 kg) tail weight and 42.2 percent of the trips were less than 300 lb (136 kg) tail weight. However, as previously noted, these vessels would have monkfish DAS that they could utilize in the NFMA to land monkfish in excess of the proposed incidental catch limit, mitigating the impact of the proposed measure on these vessels.

5. Target TAC Overage Backstop Provision

The proposed target TAC overage backstop measure would potentially affect all vessels landing more than the incidental catch limit in either management area, since it could lead to a closure of the directed fishery in either or both management areas during FY 2009. The analysis of this measure is based on the closure of the directed fishery during FY 2009, since this is the worst case scenario under the proposed measure.

For vessels fishing only in the NFMA, decreases in average vessel return would range from 0.8 to 2.7 percent under the trip limit and DAS alternatives considered, and would be 2.2 percent under the proposed trip limit and DAS alternative for the NFMA. Decreases in average crew return would range from 1.4 to 4.9 percent, and would be 4.0 percent under the proposed action. Declines in average monkfish revenue would range from 3.5 to 12.1 percent, and would be 9.9 percent under the proposed action.

For vessels that fish only in the SFMA, decreases in average vessel return would be 6.5 percent under the proposed trip limit and DAS alternative for the SFMA, and 7.3 percent under the other trip limit and DAS alternative considered. Decreases in average crew return would be 8.5 percent under the proposed action and 9.5 percent under the other alternative considered. Declines in average monkfish revenue would be 68.6 percent under the proposed action and 71.4 percent under the other alternative considered.

For vessels that fish in both areas, the ability to fish in both areas tends to mitigate the impacts of changes to management measures in either area. The proposed action would result in

declines of 2.9, 3.0, and 7.4 percent in average vessel return, net payment to crew, and monkfish revenue, respectively. These results represent the worst case scenario of both the NFMA and SFMA closing under the proposed target TAC overage backstop alternative.

6. Extension of Measures Beyond FY 2009

The two alternatives, including no action, describe the measures that would be in place beyond the final 3 years of the rebuilding program if the Councils take no additional action to implement a revised management program. Under the no action alternative, whatever measures are in effect in 2009 would remain in place, even if the directed fishery is shut down under the target TAC overage backstop provision (if adopted). Under the proposed action, if the directed fishery is shut down under the TAC overage backstop provision, and the Councils take no action to revise the management program for FY 2010 and beyond, then the measures in place in FY 2008 would be in effect. The economic impact of these two options cannot be quantified at this time, but qualitatively, the closure of the directed fishery continuing into FY 2010 and beyond (if that occurs) would likely have a greater negative impact on vessels and communities dependent on monkfish than allowing a directed fishery to occur due to the lost revenues from the relatively high value monkfish fishery, to the extent those lost revenues are not made up for by any increased revenues from other fisheries as vessels seek to compensate for the closure.

7. Revision to Boundary Line for Category H Permit Holders

Amendment 2 established a new fishery for some vessels that did not qualify for a limited access permit in the initial FMP. Seven vessels qualified for this fishery and six are actively fishing. These vessels have been constrained by area closures to protect sea turtles, so that the area available to them for fishing is approximately 20 nautical miles (37 km) wide. This, coupled with the limited season when monkfish are available in the area, led the industry to request that the boundary for the fishery be moved northward 20 nautical miles (37 km) from 38°20' N lat. to 38°40' N lat. The proposed action would increase the fishing opportunities available to the affected vessels.

8. Scallop Closed Area Access Program Monkfish Incidental Catch Limit

Under the no action alternative, scallop vessels fishing in the Closed

Area Access Program have a monkfish incidental limit applicable to vessels fishing with a dredge and not on a scallop DAS, or 50 lb (23 kg) tail weight per day to a maximum of 150 lb (68 kg) tail weight. Under the proposed action, the incidental limit applicable to those vessels would be the same as applies to scallop vessels fishing on a scallop DAS, or 300 lb (136 kg) tail weight per DAS, except that the incidental limit would be based only on the time that the vessel is in the applicable scallop access area, not including steaming time. The proposed action would have a slightly positive economic effect compared to the no action alternative, because it would enable scallop vessels to convert discards to landings and realize the revenue from that catch. The magnitude of this effect, however, is not expected to be significant relative to the value of the scallop landings on those trips. The Councils do not expect that the proposed action presents any new incentive for scallop vessels to target monkfish under the increased incidental limit, given the relative value of the scallop catch to the difference in allowable monkfish landings under the two alternatives.

This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the provision that would allow limited access monkfish vessels fishing in the NFMA to change their VMS declaration while at sea is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection 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 the Northeast Regional Office at the

ADDRESSES above, and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 14, 2007.

Samuel D. Rauch III,

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 § 648.4, the paragraph headings for (a)(9)(i)(A)(6) and (7) are revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *

(9) * * *

(i) * * *

(A) * * *

(6) *Category G permit (vessels restricted to fishing south of 38°40' N. lat. As described in § 648.92(b) that do not qualify for a monkfish limited access Category A, B, C, or D permit).* * * *

(7) *Category H permit (vessels restricted to fishing south of 38°40' N. lat. As described in § 648.92(b) that do not qualify for a monkfish limited access Category A, B, C, or D permit).* * * *

* * * * *

3. In § 648.92, paragraphs (b)(1), (b)(2)(i), (b)(2)(ii)(B), and (b)(9)(i) are revised to read as follows:

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

* * * * *

(b) * * *

(1) *Limited access monkfish permit holders.*—(i) *General provision.* Limited access monkfish permit holders shall be allocated 31 monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless otherwise restricted by paragraph (b)(1)(ii) of this section or modified by

§ 648.96(b)(3), or unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iv) of this section. The annual allocation of monkfish DAS shall be reduced by the amount calculated in paragraph (b)(1)(v) of this section for the research DAS set-aside. Limited access NE multispecies and limited access sea scallop permit holders who also possess a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

(ii) *DAS restrictions for vessels fishing in the SFMA.* Limited access monkfish vessels may only use 23 of their 31 monkfish DAS allocation in the SFMA. All limited access monkfish vessels fishing in the SFMA must declare that they are fishing in this area through the vessel call-in system or VMS prior to the start of every trip. In addition, 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 shall presume that any monkfish DAS used were fished in the SFMA.

(iii) *DAS declaration provision for vessels fishing in the NFMA with a VMS unit.* Any limited access NE multispecies vessel fishing under a NE multispecies Category A DAS in the NFMA, and issued a LOA as specified in § 648.94(f), may change its DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip, but prior to crossing the VMS demarcation line upon its return to port or leaving the NFMA, if the vessel exceeds the incidental catch limit specified under § 648.94(c). Vessels that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS during the course of a trip remain subject to the NE multispecies DAS usage provisions described in paragraph (b)(2)(i) of this section.

(iv) *Offshore Fishery Program DAS allocation.* A vessel issued a Category F permit, as described in § 648.95, shall be allocated a prorated number of monkfish DAS as specified in § 648.95(g)(2).

(v) *Research DAS set-aside.* A total of 500 DAS shall be set aside and made available for cooperative research programs as described in paragraph (c) of this section. These DAS shall 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 shall 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 31 DAS and there were 750 limited access monkfish permits issued during FY 2006, the number of DAS allocated to each vessel during FY 2007 would be 31 DAS minus 0.7 (500 DAS divided by 750 permits), or 30.3 DAS.

(2) * * *

(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 20, and the vessel fished 20 of its 31 monkfish DAS, 20 NE multispecies Category A DAS would also be used. However, after all 20 NE multispecies Category A DAS are used, the vessel may utilize its remaining 11 monkfish DAS to fish for 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) * * *

(A) * * *

(B) A monkfish Category C, D, F, G, or H vessel that leases DAS to another vessel(s), pursuant to § 648.82(k), must forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining NE multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 31 unused monkfish DAS and 35 allocated NE multispecies DAS, leased 10 of its NE multispecies DAS to

another vessel, the lessor would forfeit 6 of its monkfish DAS (10 - (35 NE multispecies DAS - 31 monkfish DAS) = 6).

(9) * * *

(i) Vessels issued monkfish limited access Category G or H permits may only fish under a monkfish DAS in the area south of 30°40' N. lat.

* * * * *

4. In § 648.94, paragraphs (b)(1), (b)(2)(i), (b)(2)(ii), (b)(3)(i), (b)(3)(ii), (c)(1)(i), and (c)(8) are revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(1) *Vessels fishing under the monkfish DAS program in the NFMA—(i) Category A and C vessels.* Limited access monkfish Category A and C vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 1,250 lb (567 kg) tail weight or 4,150 lb (1,882 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

(ii) *Category B and D vessels.* Limited access monkfish Category B and D vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 470 lb (213 kg) tail weight or 1,560 lb (708 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

(2) *Vessels fishing under the monkfish DAS program in the SFMA—(i) Category A, C, and G vessels.* Limited access monkfish Category A, C, and G vessels that fish under a monkfish DAS in the SFMA may land up to 550 lb (249 kg) tail weight or 1,826 lb (828 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

(ii) *Category B, D, and H vessels.* Limited access monkfish Category B, D, and H vessels that fish under a monkfish DAS in the SFMA may land up to 450 lb (204 kg) tail weight or 1,494 lb (678 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32).

* * * * *

(3) *Category C, D, F, G and H vessels fishing under the multispecies DAS program—(i) NFMA.* Limited access monkfish Category C, D, F, G, or H vessels that are fishing under a NE

multispecies DAS, and not a monkfish DAS, exclusively in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section. Category C, D, F, G and H vessels participating in the Northeast Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(ii) *SFMA—(A) Category C, D, and F vessels.* Limited access monkfish Category C, D, or F vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not a monkfish DAS, 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 at any time during the trip. Category C, D, and F vessels participating in the Northeast Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(B) *Category G, and H vessels.* Limited access monkfish Category G and H vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not under a monkfish DAS, are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. Category G and H vessels participating in the Northeast Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

* * * * *

(c) * * *
(1) * * *

(i) *NFMA.* Vessels issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, fishing under a NE multispecies DAS exclusively in the NFMA may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 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 purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

(8) Scallop vessels not fishing under a scallop DAS with dredge gear—(i) General provisions. A vessel issued a valid monkfish incidental catch (Category E) permit and a valid General

Category sea scallop permit or a limited access sea scallop vessel not fishing under a scallop DAS, while fishing exclusively with scallop dredge gear 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) tail weight or 498 lb (226 kg) whole weight per trip, unless otherwise specified in paragraph (c)(8)(ii) of this section.

(ii) Limited access scallop vessels fishing in Sea Scallop Access Areas. A vessel issued a valid monkfish incidental catch (Category E) permit and a limited access sea scallop permit while fishing exclusively with scallop dredge gear as specified in § 648.51(b), and fishing in one of the established Sea Scallop Access Areas specified under § 648.59, may possess, retain, and land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per day or partial day fished within the boundaries of the Sea Scallop Access Area. Time within the applicable access area, for purposes of determining the incidental catch limit, will be determined through the vessel's VMS unit.

* * * * *

5. In § 648.96, the section heading is revised, paragraph (a) heading, (b)(1) through (4) are revised, and paragraphs (b)(5) and (b)(6) are added to read as follows:

§ 648.96 Monkfish annual target TACs and framework specifications.

(a) *Annual review.* * * *
(b) * * *

(1) *Annual Target TACs for FY 2007 through FY 2009—(i) NFMA.* The annual target TAC for the NFMA is 5,000 mt for FY 2007 through FY 2009, unless otherwise recommended by the MFMC through its annual review procedure specified in paragraph (a) of this section, and adopted through the procedures outlined in paragraph (b)(4) of this section.

(ii) *SFMA.* The annual target TAC for the SFMA is 5,100 mt for FY 2007 through FY 2009, unless otherwise recommended by the MFMC through its annual review procedure specified in paragraph (a) of this section, and adopted through the procedures outlined in paragraph (b)(4) of this section.

(2) *Annual Target TACS for FY 2010 and beyond.* If a regulatory action is not implemented to establish target TACs for the monkfish fishery for FY 2010 or subsequent years, either through the annual review procedure described in paragraph (a) of this section or another type of regulatory action, the target

TACs in effect during FY 2007–FY 2009 will remain in effect until new measures are implemented. The management measures for FY 2010 or subsequent years that would be associated with these target TACs is described in paragraph (b)(6) of this section.

(3) *Setting DAS allocations—(i)* The process of determining the appropriate DAS allocations for each management area involves first estimating incidental landings for each management area and then estimating the proportional catch for permit categories A and C, and permit categories B, D, and H based upon vessel trip reports for the most recently completed fishing year for which a complete set of landings data exists. The landings proportions generated for each permit category group (A and C versus B, D, and H) are then used to estimate the landings that would be associated with each permit category group under a given target TAC, less projected incidental landings. For example, a target TAC of 5,100 mt equates to 11,243,580 lb (5,100,000 kg). If incidental landings for the SFMA are projected to be 2,070,000 lb, the total amount of the target TAC available to limited access vessels would be 9,173,580 lb (4,161,066 kg). If the proportion of landings for permit category A and C vessels is 37 percent, and the proportion for permit category B, C, and H vessels is 63 percent, then the landing levels associated with each permit category group under this target TAC would be 3,394,225 lb (1,539,595 kg) and 5,779,355 lb (2,621,471 kg), respectively.

(ii) Landings are assumed to be fixed at a constant rate per day for each vessel, equivalent to the average daily landings of each vessel in the reference year, of the last applicable full year of landings data (a year is applicable if the TAC in that year was lower than the TAC in the year to be calculated).

(iii) To adjust for the ability of vessels to carryover up to 10 unused monkfish DAS from the previous fishing year to the current fishing year, adjustments to DAS usage shall be made by first reducing the landings for all permit holders who have used more than the annual DAS allocation specified in § 648.94(b)(1)(i) (e.g., 31 monkfish DAS) by the proportion of DAS exceeding that annual DAS allocation, and then resetting the upper limit of DAS usage at the annual DAS allocation.

(iv) Linear interpolation is then used to determine which DAS level would closest achieve the estimated landing levels for each permit category group under a given target TAC.

(4) *Council TAC Recommendations.* The Councils shall consider any target

TAC(s) recommended by the MFMC as part of its annual review specified in paragraph (a) of this section, and then forward their target TAC recommendation to the Regional Administrator. If the Councils recommend target TAC(s) to the Regional Administrator, and the Regional Administrator concurs with this recommendation, the Regional Administrator shall promulgate the target TAC(s) and associated management measures through rulemaking consistent with the APA. If the Regional Administrator does not concur with the Councils' recommendation, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(5) *Target TAC Overages*—(i) If monkfish landings exceed the annual target TAC for either management area by more than 10 percent but less than or equal to 30 percent during FY 2007, the Regional Administrator shall adjust

the annual monkfish DAS allocation for the management area in which the overage occurred, through rulemaking consistent with the APA, for FY 2009 using catch and effort information for FY 2007 according to the procedures outlined in paragraph (b)(3) of this section.

(ii) If monkfish landings exceed the annual target TAC for either management area by more than 30 percent during FY 2007, the Regional Administrator shall reduce the annual monkfish DAS allocation to zero for FY 2009 for the management area in which the overage occurred, through rulemaking consistent with the APA.

(6) *Management measures for FY 2010 and beyond*. If a regulatory action is not implemented to establish management measures for the monkfish fishery for FY 2010 or subsequent years, either through the annual review process or another type of regulatory action, the management measures in

effect during FY 2009 (i.e., trip limits and DAS allocations) will remain in effect until new measures are implemented, with the following exception. If the monkfish DAS allocation is reduced to zero in either management area during FY 2009 as a result of the target TAC overage provision described in paragraph (b)(3) of this section, the annual DAS allocation and associated trip limits for that management area for FY 2010 and beyond will be equivalent to the annual monkfish DAS allocation and trip limits in effect during FY 2008, unless otherwise recommended by the MFMC through its annual review procedure specified in paragraph (a) of this section, or until superceded by a subsequent regulatory action.

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