

**Exceptions to Service Bulletin**

(i) Where Boeing Alert Service Bulletin 747-54A2203, Revision 1, dated August 9, 2007, specifies a compliance time after the date of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) Where Boeing Alert Service Bulletin 747-54A2203, Revision 1, dated August 9, 2007, specifies to contact Boeing for appropriate action, this AD requires, before further flight, repair of the discrepancy or replacement of the discrepant part using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**Material Incorporated by Reference**

(1) You must use Boeing Alert Service Bulletin 747-54A2203, dated August 31, 2000; and Boeing Alert Service Bulletin 747-54A2203, Revision 1, dated August 9, 2007; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747-54A2203, Revision 1, dated August 9, 2007, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On December 6, 2000 (65 FR 69862, November 21, 2000), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747-54A2203, dated August 31, 2000.

(3) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on September 14, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 648**

**[Docket No. 0612243159-7456-03; 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:** Interim final rule; request for comments.

**SUMMARY:** NMFS implements new management measures for the monkfish fishery approved in Framework Adjustment 4 to the Monkfish Fishery Management Plan (FMP). This framework eliminates the control rule for determining management measures established by Framework Adjustment 2 to the FMP, and establishes target total allowable catch (TAC) levels, trip limits, and days-at-sea (DAS) allocations for the final 3 years of the monkfish rebuilding plan. The intent of this action is to replace the Framework 2 control rule with measures consistent with the stock rebuilding goals established in the original FMP, and in accordance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements. NMFS is publishing this action as an interim final rule in order to provide the opportunity for additional public comment because the approval of Framework 4 was based, in part, on the consideration of the integrated monkfish stock assessment, which was not available during the original public comment period. This action also contains three changes to address incorrect cross-references or duplicate regulatory text.

**DATES:** The interim rule published on April 27, 2007 (72 FR 20952), which is

scheduled to expire on October 28, 2007, is superseded by this interim final rule and expires at 12:01 a.m. on October 22, 2007. The amendments in this interim final rule become effective at 12:02 a.m. on October 22, 2007. Comments on the measures contained in this interim final rule must be received by 5 p.m. on October 22, 2007.

**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, 50 Water Street, Newburyport, MA, 01950. The document is also available online at [www.nefmc.org](http://www.nefmc.org). NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the classification section of this interim final 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 [www.nero.noaa.gov/nero/nr/](http://www.nero.noaa.gov/nero/nr/).

Written comments on this interim final rule may be submitted by any of the following methods:

- E-mail: E-mail comments may be submitted to [monkfish.FW4interim@noaa.gov](mailto:monkfish.FW4interim@noaa.gov). Include in the subject line the following "Comments on the Interim Final Rule for Framework Adjustment 4."
- 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 Interim Final Rule for Framework Adjustment 4 to the Monkfish FMP."
- Facsimile (fax): Comments submitted by fax should be faxed to (978) 281-9135.

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

**FOR FURTHER INFORMATION CONTACT:** Allison McHale, Fishery Policy Analyst, e-mail [Allison.McHale@noaa.gov](mailto: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 New England Fishery Management Council (NEFMC) having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The NFMA and the Southern Fishery Management Area (SFMA). The original Monkfish FMP established a framework adjustment process that requires an annual review by the Monkfish Monitoring Committee (MFMC) to evaluate the effectiveness of the FMP in meeting its conservation objectives. This annual review was a fairly general process calling for the development of target total allowable catch levels (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 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 became apparent that the Framework 2 control rule could result in measures that were inconsistent with the rebuilding goals of the FMP because changes to the target TACs are based, in large part, on prior landings. Thus, under the existing control rule, target TACs could be increased even when annual biomass rebuilding targets are not being met.

The Councils initiated Framework 4 during the spring of 2006 because of the above mentioned concerns regarding the Framework 2 control rule and the status of the monkfish resource with respect to the rebuilding schedule established in the FMP. The intent of Framework 4 is to replace the Framework 2 control rule with measures consistent with the stock rebuilding goals established in the original FMP. 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 postponed making a decision on Framework 4 and implemented interim measures for the start of the 2007 fishing year (72 FR 20952, April 27, 2007) until

a new monkfish stock assessment could be conducted in July 2007.

The results of the monkfish stock assessment, conducted by the Northeast Data Poor Stocks Working Group (Northeast Fisheries Science Center Reference Document 07-13) became available in August 2007. The summary report for this assessment entitled "Monkfish assessment summary for 2007" is available online at [www.nefsc.noaa.gov/nefsc/publications/crd/crd0713/](http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0713/). A new analytic model was developed and applied to the available scientific information for monkfish. Based on the existing biomass reference points in the FMP, monkfish is considered overfished in both the northern and southern stock management areas. New biological reference points were developed as part of the 2007 assessment, based on a revised yield-per-recruit analysis (using a revised value of the natural mortality rate) and results of a length-tuned model that incorporates multiple survey indices and catch data. Based on the reference points generated through this assessment, monkfish in both management regions would be considered not overfished, and overfishing is not occurring. However, the median and maximum sizes of monkfish in both the north and south have declined since the 1980s.

The new assessment results are accompanied by substantial uncertainty, and therefore need to be viewed with caution. Reservations highlighted in the assessment report include: (1) input uncertainties (under-reported landings and unknown discards of monkfish during the 1980s and incomplete understanding of key biological parameters such as age and growth, longevity, natural mortality, and stock structure); (2) the shorter assessment time frame of data used (1980–2006) than was used in previous assessments (1963–2006); and (3) the relatively recent development of the assessment model. More specifically, the assessment hinges critically on assumptions regarding growth, longevity, and natural mortality of monkfish, all of which are poorly known. In addition, commercial catches prior to 1993 are not well characterized. Model results are sensitive to the assumed value of natural mortality, revised in this assessment from 0.2 to 0.3 per year. This decision was based on the observed longevity of male and female fish in the resource; however, the actual lifespan of monkfish may be greater than that which has been observed thus far. Uncertainties in key life history parameters and historical

catches are unlikely to be resolved in the short term.

The assessment model was also used to evaluate the impacts of target TACs proposed in Framework 4 (5,000 mt in the north and 5,100 mt in the south), assuming long-term average recruitment. The results indicate that total biomass in both regions would increase through 2009 and remain above the newly estimated  $B_{\text{target}}$ . In other words, if the new biomass reference points were applied, fishing at the Framework 4 target TAC levels would keep the stocks at levels such that they would not be considered overfished. However, these results did not incorporate any uncertainty associated with the stock size estimates for 2006, and further work is necessary to develop a complete forecasting approach. The report concluded that the data-poor nature of this species and the significant uncertainty in assessing the stocks should be considered when developing management measures.

The biomass reference points currently contained in the FMP, which are used to make stock status determinations, remain unchanged at this time. The Councils will be presented with the new stock assessment results in the next few months. If, on the basis of this new information, the Councils determine that the FMP should be amended to replace the existing biomass reference points with the new biomass reference point recommendations, the Councils would need to do so through a future action. A change in determination of overfished status for both of the monkfish stocks cannot be made unless and until the biomass reference points contained in the FMP are changed. However, the new assessment did not recommend a change in the fishing mortality reference point ( $F_{\text{max}}$ ), but did update the value associated with this reference point for each management area based upon the most recent information available. Thus, the determination can be made, based on the existing fishing mortality reference points, that overfishing is not occurring on either stock. Therefore, NMFS is approving Framework 4, under the rebuilding plan contained in the FMP, since the best available scientific information supports a determination that overfishing is no longer occurring on either stock, and because the target TACs contained in Framework 4 are appropriate for the management of the two monkfish stocks, given the considerable uncertainty that still remains. This action supercedes the interim rule, and the regulatory text in this interim final rule is written to

amend the regulations in 50 CFR part 648 as they appeared prior to implementation of the interim rule. In light of the integrated monkfish stock assessment results, which were not available during the public comment period, NMFS is seeking additional public comment on this action.

#### Approved Framework Measures

##### 1. Target TACs for the NFMA and SFMA

In addition to changing 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 its annual review process. Essentially, this framework adjustment removes the Framework 2 control rule and replaces 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 synthesis of nine different 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 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 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**).

##### 2. DAS Requirement for the NFMA

This interim final rule requires 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 provision, 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. In addition, this action revises the minimum mesh size applicable to limited access monkfish gillnet vessels fishing in the NFMA that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS while at sea. Such vessels will be subject to the smaller NE multispecies gillnet minimum mesh size associated with the NE multispecies regulated mesh area in which the vessel is fishing versus the relatively larger monkfish gillnet minimum mesh size requirement.

The purpose of the at-sea declaration component of this management measure 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 enables 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 decision to apply this at-sea declaration provision only 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 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 by 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 establishes an annual monkfish DAS allocation of 31 DAS for limited access monkfish vessels fishing in the NFMA. This action also establishes 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. The DAS allocations contained in this interim final rule are for the entire FY 2007, and, as such, are inclusive of the DAS allocated under the April 27, 2007, interim rule. Therefore, vessels previously allocated 31 DAS under the interim rule will not be granted any additional DAS under this interim final rule.

##### 4. Trip limits and DAS Allocations for the SFMA

This action restricts 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 establishes an annual allocation of 31 monkfish DAS for all limited access monkfish vessels, but restricts vessels to using no more than 23 of their allocated 31 monkfish DAS in the SFMA. The DAS restrictions in this interim final rule are for the entire FY 2007, and, as such, are inclusive of the DAS restrictions contained in the April 27, 2007, interim rule. Therefore, vessels previously restricted to using 12 monkfish DAS in the SFMA under the interim rule will be authorized to use an additional 11 monkfish DAS, not counting any available carryover DAS, during FY 2007 through this interim final rule, for a total of 23 DAS during FY 2007.

This action also establishes 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 and under the interim rule.

##### 5. Monkfish Incidental Catch Limit for the NFMA

This action reduces 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 revised incidental catch limit for the NFMA is equivalent to that implemented in the original FMP.

#### 6. Target TAC Overage Backstop Provision

The target TACs and associated management measures contained in this interim final rule are intended to remain in effect for the final 3 years of the FMP 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 recommended a target TAC overage backstop provision in Framework 4 that enables 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 FY 2009, Framework 4 contains a provision to extend management measures into FY 2010 and beyond. Under this interim final rule, the management measures in place for FY 2009 would remain in effect in FY 2010 and beyond unless the target TAC overage backstop provision (see item 6) results in the closure of the directed monkfish fishery during FY 2009. In this case, the management measures in effect for FY 2010 and beyond would be those in effect during FY 2008 in the area where the directed fishery had been closed.

#### 8. Revision to Boundary Line for Category H Permit Holders

This action revises 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, Framework 4 shifts the northern boundary line applicable to limited access monkfish Category H vessels northward by 20 nautical miles (37 km) to 38°40' N lat. in order 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 by the Councils, representatives from the scallop fishing 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, because 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 the Scallop 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 fishing industry, Framework 4 revises the monkfish possession limit applicable to limited access scallop vessels fishing in the Scallop Area Access Program to be 300 lb (136 kg) tail weight per day fished within the access area, not to include steaming time.

#### 10. Re-establishment of Carryover DAS

The April 27, 2007, interim rule prohibited the use of carryover DAS. By default, since the Councils chose to take no action to change the DAS carryover provisions through Framework 4, this action re-establishes the Monkfish FMP provision allowing limited access monkfish vessels to carryover up to 10 unused monkfish DAS from one fishing year to the next.

#### 11. Additional Changes

A section of the final rule implementing Joint NE Multispecies Framework 42/Monkfish Framework 3 (71 FR 62156; October 23, 2006) that pertained to the NE Multispecies Regular B DAS Program contained an error in a cross-reference to the monkfish possession limit regulations

under § 648.94. This action revises the incorrect cross-reference of § 648.94(b)(7) found under § 648.85(b)(6)(iv)(D) to be § 648.94(b)(3). This error was the result of an oversight in carrying forward regulatory changes from the April 13, 2006, emergency interim rule to the NE Multispecies FMP (71 FR 19348) that were also contained in this joint framework (i.e., the cross-reference was not updated in the final rule implementing this joint framework).

This action also makes two additional changes that appear to be oversights in the regulatory text implementing Amendment 2 to the Monkfish FMP (70 FR 21927; April 28, 2005). The first correction deletes a cross reference to § 648.93(b)(2) in the prohibition concerning the monkfish management area declaration requirement, found at § 648.14(y)(21), since it is no longer valid. Amendment 2 eliminated the need for an area declaration requirement associated with the monkfish minimum fish size provisions under § 648.93 since that action made the minimum fish size equivalent across both management areas. In addition, this interim final rule removes some duplicate regulatory text concerning the impact of the NE multispecies leasing program on monkfish DAS found at § 648.92(b)(2)(iii) that should have been deleted when that section was revised during the Amendment 2 rulemaking process.

#### Comments and Responses

The public comment period on the proposed rule for Framework 4 ended on April 19, 2007, with 24 comments received. All of the public comments, except one, supported the management measures contained in Framework 4. Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are addressed in this preamble. In implementing inseason framework adjustment measures such as Framework 4, NMFS may only approve or disapprove measures, and may not select another alternative considered (and not rejected) by the Councils or unilaterally modify any measure in a substantive way pursuant to the monkfish inseason framework adjustment provisions found under § 648.96(c)(2), unless the framework action was initiated through the FMP annual review process as specified under § 648.96(c)(1).

*Comment 1:* One commenter stated that the monkfish quotas should be cut by 50 percent this year and by 10 percent each succeeding year.

*Response:* The target TACs being implemented in this interim final rule represent an average decrease of 50 percent in overall fishing effort (i.e., across both management areas) since FY 2002. Specifically, the 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 the target TACs in effect since FY 2002. Similarly, although the target TAC for the SFMA is 39 percent higher than the target TAC in effect for FY 2006, it is 33 percent lower than the average of the target TACs in effect since FY 2002. The appropriateness of these target TACs is further confirmed by a recently completed integrated monkfish stock assessment.

*Comment 2:* Twelve of the commenters expressed support for the "Backstop" and "Extension" provisions contained in Framework 4. In addition to expressing general support for these provisions, one commenter noted that the "Backstop" provision should be linked to a clearly defined agency commitment to a dynamic monkfish-specific survey/assessment process. Otherwise, they noted, decisions affecting the monkfish fishery over the long term would not be based on relevant data.

*Response:* NMFS acknowledges the commenters' support of these measures and is fully aware of the data needs for this fishery. The Monkfish Research Set-Aside (RSA) Program is aimed at gathering this much needed information through cooperative research.

*Comment 3:* Eleven commenters supported the provision to revise the northern boundary line applicable to limited access monkfish Category H vessels by moving this boundary northward by 20 nautical miles (37 km).

*Response:* NMFS acknowledges the need for the boundary line change as conveyed by members of the fishing industry, as outlined in item 8 of the description of approved measures contained in the preamble to this interim final rule.

*Comment 4:* Twelve commenters expressed support for the revision to the incidental catch limit applicable to limited access scallop vessels that participate in the Scallop Area Access Program, with one commenter, a representative for the scallop industry, detailing the need for this measure.

*Response:* NMFS recognizes the need for this revision, which was triggered by a change in the Sea Scallop FMP (Framework Adjustment 18) that removed the DAS requirements for the Scallop Access Areas. The rationale for this management measure is provided in item 9 of the description of approved

measures contained in the preamble to this interim final rule, and is not repeated here.

*Comment 5:* Eleven commenters expressed support for the reduction in the incidental catch limit in the NFMA applicable to monkfish vessels (limited and open access) fishing under a NE multispecies DAS.

*Response:* NMFS acknowledges the industry's support for this measure being implemented in this interim final rule. The rationale for this measure is provided in item 5 of the description of approved measures contained in the preamble to this interim final rule, and is not repeated here.

*Comment 6:* Six commenters expressed support for the management measure requiring vessels that fish in the NFMA to use a monkfish DAS if the vessel intends to harvest monkfish in excess of the incidental catch limit. Five commenters specifically commented on the provision contained within this measure that would allow vessels fishing in the NFMA that start a trip under a NE multispecies Category A DAS to change their DAS declaration to a monkfish DAS through the vessel's VMS unit while at sea, and prior to crossing the VMS demarcation line its return to port.

*Response:* NMFS initially expressed concerns over the DAS change provision, since it is unclear how this provision will enable vessels to more efficiently utilize their monkfish DAS, which could lead to an overage in the target TAC. However, these initial concerns are outweighed by the benefit of requiring the use of monkfish DAS in the NFMA, to which this provision is tied in Framework 4. A full discussion of the rationale for this measure is provided in item 2 of the description of approved measures contained in the preamble to this interim final rule.

*Comment 7:* Twelve individuals commented on the proposed change to the DAS carryover provision contained in Framework 4. The Councils voted not to change the DAS carryover provision in Framework 4, and 11 of these commenters supported that decision. However, one individual expressed concern over the Councils decision, suggesting that a 10 DAS carryover is too high for a fishery allocated so few DAS.

*Response:* NMFS is also concerned by the Council's decision not to revise the DAS carryover provision in Framework 4, although its concerns are somewhat allayed based on the recently completed integrated monkfish stock assessment. In FY 2006, the target TAC for the SFMA was exceeded by over 60 percent, likely due to the use of carryover DAS.

NMFS intends to urge the Council to re-address the DAS carryover provision in its next action.

*Comment 8:* Eleven individuals supported maintaining the 40 monkfish DAS allocation, but reducing current DAS usage.

*Response:* None of the DAS alternatives considered by the Councils in Framework 4 included a provision that would maintain the annual monkfish DAS allocation at 40 DAS but reduce current DAS usage. What was proposed by the Councils, and is being implemented in this interim final rule, is the management measure allocating all limited access monkfish vessels a reduced annual monkfish DAS allocation of 31 DAS, but restricting DAS usage in the SFMA to 23 DAS.

#### Changes From the Proposed Rule

NMFS has made eight changes to the proposed rule, all of which are to ensure consistency with and effective implementation of Framework 4 as it relates to management measures in other FMPs. Two of these have been made to incorporate changes to the minimum mesh size requirement applicable to limited access monkfish gillnet vessels fishing in the NFMA that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS while at sea, as provided in Framework 4, since these changes were left out of the proposed rule. The third change is a correction to the final rule implementing Joint NE Multispecies Framework 42/Monkfish Framework 3 to update an incorrect cross-reference concerning the NE Multispecies Regular B DAS Program. The fourth change has been made to update the cross-reference to the incidental catch restrictions for limited access monkfish vessels when not fishing under a DAS program to be inclusive of all the applicable incidental catch limit regulations. The fifth change makes a similar revision to the monkfish incidental catch restrictions applicable to general category and limited access scallop vessels to include a reference to limited access monkfish vessels not fishing under a scallop DAS. The sixth change deletes a cross-reference in the monkfish prohibitions that is no longer valid, and the seventh change deletes some duplicate regulatory text under the monkfish effort control regulations. The eighth change adds a sentence concerning a prohibition on the use of NE multispecies B Regular DAS in conjunction with a monkfish DAS to the monkfish effort control regulations that currently exist, but was left out of the proposed revision to § 648.92(b)(2)(i) contained in the proposed rule. These

eight changes are specifically identified as follows.

In § 648.14, paragraph (y)(21) has been revised to delete the cross-reference to § 648.93(b)(2).

In § 648.85, paragraph (b)(6)(iv)(D) has been revised to correct the cross-reference to the monkfish possession limits applicable to limited access monkfish vessels fishing under the NE Multispecies Regular B DAS Program from § 648.94(b)(7) to § 648.94(b)(3).

In § 648.91, paragraph (c)(1)(iii) has been revised to include a change to minimum mesh size restrictions applicable to limited access monkfish vessels fishing with gillnet gear in the NFMA that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS while at sea. Under the DAS change provision contained in Framework 4, these vessels are subject to the NE multispecies gillnet minimum mesh size associated with the NE multispecies regulated mesh area in which the vessel is fishing, versus the monkfish gillnet minimum mesh size.

In § 648.92, paragraph (b)(1)(iii) has been revised to include a reference to the minimum mesh size requirement applicable to limited access monkfish gillnet vessels fishing in the NFMA that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS while at sea. As noted above, under the DAS change provision contained in Framework 4, these vessels are subject to the NE multispecies minimum mesh size associated with the NE multispecies regulated mesh area in which the vessel is fishing. In addition, some additional wording was added to clarify that the NE multispecies DAS provisions referenced are those requiring the use of a NE multispecies Category A DAS with a monkfish DAS.

In § 648.92, paragraph (b)(2)(i) has been revised to include a sentence concerning the prohibition on the use of a NE multispecies B Regular DAS to satisfy the requirement to use a NE multispecies DAS in conjunction with a monkfish DAS that is applicable to monkfish limited access Category C, D, F, G, or H vessels that also possess a limited access NE multispecies DAS permit.

In § 648.92, paragraph (b)(2)(iii) has been removed.

In § 648.94, paragraph (b)(6) has been revised to update the cross-reference to the monkfish incidental catch regulations in order to clarify that all limited access monkfish vessels are subject to the same incidental catch restrictions as open access Category E vessels when not fishing under a DAS.

In § 648.94, paragraph (c)(8) has been revised to include the following phrase under paragraphs (c)(8)(A) and (B) “or a valid limited access Category C, D, F, G, or H permit, and also possessing” to clarify that all limited access monkfish vessels possessing scallop permits are subject to the same incidental catch restrictions as open access Category E vessels possessing scallop permits when not fishing under a DAS.

Pursuant to the Paperwork Reduction Act (PRA), 15 CFR part 902 lists control numbers assigned to NMFS information collection requirements by OMB. This part fulfills the requirements of section 3506(c)(1)(B)(i) of the PRA, which requires that agencies display a current control number, assigned by the Director of OMB, for each agency information collection requirement. This interim final rule codifies OMB Control Number 0648-0561 for § 648.92.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

#### Classification

The Administrator, Northeast Region, NMFS, determined that Framework 4 is necessary for the conservation and management of the monkfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the approved measures in Framework 4. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here. A copy of the EA/RIR/IRFA is available from the NEFMC (see **ADDRESSES**).

#### Final Regulatory Flexibility Analysis Statement of Objective and Need

A description of why this action was considered, the objectives of, and the legal basis for this interim final rule are contained in the preambles to the proposed rule and this interim final rule and are not repeated here.

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

Twenty-four public comments were submitted on the proposed rule. However, none of these comments were specific to the IRFA or the economic effects of the rule. NMFS has responded to these comments in the Comments and Responses section of the preamble to this interim final rule. No changes were made to this interim final rule as a result of the comments received.

#### Description and Estimate of Number of Small Entities to Which the Rule will Apply

The Small Business Administration (SBA) defines small businesses in the commercial fishing sector as firms with receipts (gross revenues) of up to \$4.0 million. All of the entities (fishing vessels) affected by this action are considered small entities under the SBA size standards for small fishing businesses. Therefore, there is no disproportionate impact on small entities compared to large entities. As of August 16, 2007, there were 724 limited access monkfish permit holders and 1,981 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. Based upon this information, the management measures contained in Framework 4 will affect at least the 627 limited access monkfish vessels that fished for monkfish and the 226 incidental permit holders landing monkfish from the NFMA during FY 2005.

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

The only approved Framework 4 measure that requires either new or revised reporting and recordkeeping requirements is the provision that enables limited access monkfish vessels that are fishing in the NFMA, that also

possess a limited access NE multispecies DAS permit, to change their DAS declaration through the vessel's VMS unit from a Category A NE multispecies DAS to a monkfish DAS while at sea and prior to crossing the VMS demarcation line on the vessel's return to port. Additional information regarding the projected reporting or recordkeeping costs associated with this action was made available for review in NMFS's PRA submission to OMB on March 20, 2007. There are no other compliance requirements associated with this interim final rule implementing Framework 4.

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

The management measures contained in Framework 4 represent a reduction in fishing opportunities for vessels fishing in the NFMA, in comparison to previous fishing years, resulting from implementation of the requirement that vessels fishing in the NFMA use monkfish DAS if they exceed, or intend to exceed, the incidental catch limit; a reduction in the total annual DAS allocations for limited access monkfish vessels; and establishment of trip limits for vessels fishing under a monkfish DAS in this management area. To minimize the impacts of these management measures on vessels fishing in the NFMA, the Councils included a provision in Framework 4 that allows limited access monkfish vessels that fish in the NFMA, if equipped with a VMS unit, to change the DAS declaration from a NE multispecies Category A DAS to a monkfish DAS while at sea, but prior to crossing the VMS demarcation line on the return to port. This provision provides these vessels with the flexibility of declaring a monkfish DAS during the course of a trip versus wasting a monkfish DAS if the vessel is unable to harvest monkfish in excess of the incidental catch limit. In addition, this provision promotes safety and prevents discards because it enables a vessel that exceeds the incidental catch limit to change its DAS declaration to a monkfish DAS versus discarding the extra monkfish or staying at sea long enough to cover the overage, as the incidental catch limit is based on pounds per NE multispecies DAS.

In addition, the Framework 4 management measure requiring vessels to declare a monkfish DAS in the NFMA if they exceed the incidental catch limit also includes a provision that enables gillnet vessels to fish with a smaller minimum mesh size, the NE multispecies minimum mesh size

applicable to the regulated mesh area in which the vessel is fishing, if that vessel changes its DAS declaration from a NE multispecies Category A DAS to a monkfish DAS while at sea. This provision enables gillnet vessels to fish with both their monkfish gillnet gear and their NE multispecies gear on the same trip, which they are currently prohibited from doing under the existing interim rule, which did not temporarily implement this DAS declaration change provision contained in Framework 4. This provision is important because it enables monkfish gillnet vessels that fish in the NFMA to operate in the same manner as they have historically, thereby minimizing the economic impacts associated with the reducing fishing opportunities resulting from the NFMA management measures contained in Framework 4.

The reduction in the incidental catch limit applicable to limited access and open access monkfish vessels fishing under only a NE multispecies DAS in the NFMA contained in Framework 4 is expected to have a minimal impact on monkfish vessels that fish in the NFMA because the majority of these vessels currently land fewer than the reduced incidental limit of 300 lb (136 kg) tail weight per NE multispecies DAS. In FY 2005, 78.2 percent of all trips by monkfish vessels fishing in the NFMA landed less than the revised 300-lb (136-kg) tail weight limit, while 82.4 percent of these trips landed less than the previous 400-lb (181-kg) tail weight limit. However, monkfish limited access Category A and C vessels had a larger percentage of trips in excess of the previous and revised 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, under Framework 4, these vessels will have monkfish DAS that they can utilize in the NFMA to land monkfish in excess of the revised incidental catch limit, minimizing the economic impact of this measure.

The target TAC overage backstop provision will either reduce the DAS allocation or close the fishery in a management area if the target TAC for that management area is exceeded by more than 10 percent during FY 2007. The Councils understood that, given the inability to precisely predict future fishing behavior, measures should be put in place in case the target TACs are

exceeded. Although this provision could lead to the closure of the fishery in FY 2009, the provision extending measures beyond FY 2009, contained in Framework 4, would reopen the fishery in FY 2010, and reinstate the management measures in effect during FY 2008. Therefore, the potential negative economic impacts associated with the target TAC overage provision are minimized by the provision to extend fishery management measures beyond FY 2009.

The remaining management measures being implemented through this interim final rule are less restrictive than those previously in effect, thereby minimizing the economic impacts of this action on small entities. These less restrictive measures include an increase in the monkfish DAS available for use in the SFMA (from 12 DAS to 23 DAS); a revision to the northern boundary line applicable to limited access Category H monkfish vessels that expands the area in which these vessels can operate by 20 nautical miles (37 km); and a revision to the incidental catch limit applicable to limited access scallop vessels that are participating in the Scallop Area Access Program that increases the amount of monkfish these vessels can land, which is roughly equivalent to the amount implemented in the original FMP.

#### 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 will be sent to all holders of Federal permits issued for the monkfish fishery. In addition, copies of this interim final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: <http://www.nero.noaa.gov/nero/nr/index.html>.

This interim final rule contains one new collection-of-information requirement subject to the PRA and which has been approved by OMB under control number 0648-0561. Public reporting burden for the DAS declaration change provision for limited access monkfish vessels fishing in the NFMA 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 of information. Send comments regarding this burden estimate or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) 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**

*15 CFR Part 902*

Reporting and recordkeeping requirements.

*50 CFR Part 648*

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 14, 2007.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 648 are amended as follows:

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under “50 CFR” is amended by adding a new entry to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * *	*
<i>50 CFR</i> * * * *	*
648.92 * * * *	-0561 *

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

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

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

■ 4. In § 648.4, paragraphs (a)(9)(i)(A)(6) and (7) headings 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, D, or G permit).* \* \* \*

\* \* \* \* \*

■ 5. In § 648.14, paragraph (y)(21) is revised to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(y) \* \* \*

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

\* \* \* \* \*

■ 6. In § 648.85, paragraph (b)(6)(iv)(D) is revised to read as follows:

**§ 648.85 Special management programs.**

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(iv) \* \* \*

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks: Cod, American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, southern windowpane flounder, and ocean pout; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA

yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl as specified under paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(6)(iv)(J) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(3).

\* \* \* \* \*

■ 7. In § 648.91, paragraph (c)(1)(iii) is revised to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) *Gillnets while on a monkfish DAS.* The minimum mesh size for any gillnets used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) diamond mesh, unless otherwise provided for under § 648.92(b)(1)(iii)(B).

\* \* \* \* \*

■ 8. In § 648.92, paragraph (b)(2)(iii) is removed, and 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).

(A) 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 requirements (i.e., use a NE multispecies Category A DAS in conjunction with the monkfish DAS) described in paragraph (b)(2)(i) of this section.

(B) Gillnet vessels that change their DAS declaration in accordance with this paragraph (b)(1)(iii) are not subject to the gillnet minimum mesh size restrictions found at § 648.91(c)(1)(iii), but are subject to the smaller NE multispecies minimum mesh requirements for gillnet vessels found under § 648.80 based upon the NE Multispecies Regulated Mesh Area in which the vessel is fishing.

(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, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies. 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. A vessel holding a Category C, D, F, G, or H limited access monkfish permit may not use a NE multispecies Category B Regular DAS under the NE Multispecies Regular B DAS Program, as specified under § 648.85(b)(6), in order to satisfy the requirement of this paragraph (b)(2)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

(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 38°40' N. lat.

\* \* \* \* \*

■ 9. In § 648.94, paragraphs (b)(1), (b)(2)(i), (b)(2)(ii), (b)(3)(i), (b)(3)(ii), (b)(6), (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) \* \* \*

(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 NE 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 NE 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 NE 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.

\* \* \* \* \*

(6) *Vessels not fishing under a NE multispecies, scallop, or monkfish DAS*. The possession limits for all limited access monkfish vessels when not fishing under a NE multispecies, scallop, or monkfish DAS are the same as those possession limits applicable to a vessel issued a monkfish incidental catch permit specified under paragraphs (c)(3) through (c)(8) 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 or a valid limited access Category C, D, F, G, or H permit, and also possessing 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 or a valid limited access Category C, D, F, G, or H permit, and also possessing 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.

\* \* \* \* \*

■ 10. In § 648.96, the section heading is revised, paragraphs (a) heading, and (b)(1) through (b)(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 are 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 (938,936 kg) 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 superceded by a subsequent regulatory action.

\* \* \* \* \*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-HQ-OAR-2003-0090; FRL-8469-8]

RIN 2060-AO05

### Extension of the Deferred Effective Date for 8-Hour Ozone National Ambient Air Quality Standards for the Denver Early Action Compact

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action to extend the deferral of the effective date of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) designation for the Denver Early Action Compact (EAC) from September 14, 2007 to November 20, 2007. The EAC areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires. On November 29, 2006, EPA extended the deferred effective date for the Denver EAC area from December 31, 2006, to July 1, 2007. In that final rulemaking, EPA noted that there was litigation regarding the deferral of the effective date for the Denver EAC and that the parties were discussing settlement. Thus, in the interest of maintaining the status quo while settlement discussion proceeded, EPA issued a brief further deferral of the effective date of the nonattainment designation until September 14, 2007. The parties are

continuing settlement discussions. EPA is issuing at this time a short further deferral of the effective date of Denver's designation for the 8-hour ozone standard from September 14, 2007 to November 20, 2007.

**DATES:** *Effective Date:* This final rule is effective on September 14, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0090. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Docket, EPA/DC, EPA West Building, EPA Headquarters Library, Room 3334, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room Hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566-1742. The Air and Radiation Docket Information Center's e-mail address is [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov), and Web address is: <http://www.epa.gov/oar/docket.html>. In addition, we have placed a copy of the rule and a variety of materials relevant to EAC areas on EPA's Web site at <http://www.epa.gov/ttn/naaqs/ozone/eac/>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Driscoll, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-04, Research Triangle Park, NC 27711, phone number (919) 541-1051 or by e-mail at: [driscoll.barbara@epa.gov](mailto:driscoll.barbara@epa.gov) or Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C304-05, Research Triangle Park, NC 27711, phone number (919) 541-5565 or by e-mail at: [cole.david@epa.gov](mailto:cole.david@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does This Action Apply to Me?

This action applies only to the Denver EAC area.