

notice of the *Seaford MO&O on Reconsideration*. Accordingly, PMCM filed its Petition for Reconsideration approximately three years late.

The Commission can only accept late-filed petitions for reconsideration if the petitioner shows that extraordinary circumstances warrant overriding the statutory filing deadline. As the D.C. Circuit has explained, “[a]lthough section 405 does not absolutely prohibit FCC consideration of untimely petitions for reconsideration, we have discouraged the Commission from accepting such petitions in the absence of extremely unusual circumstances.” Consistent with the D.C. Circuit’s decisions, the Commission in applying that standard has focused on whether the Commission has failed to adhere to its procedural rules for providing notice of its decisions. PMCM has not even attempted to show that it has met this standard, much less demonstrated that the extraordinary circumstances required under this precedent are present here.

The assertion that the Court’s decision in *PMCM TV* constituted “changed circumstances” warranting an extension of the deadline for reconsideration of the *Seaford Report and Order* is also without merit. This contention presumes incorrectly that a showing of “changed circumstances” under section 1.429(b) warrants an extension of the statutory deadline for the filing of petitions for reconsideration. Thus, PMCM claims that “[i]t is hornbook law that ‘changed circumstances’ provide an adequate legal basis for reconsideration” and that the “relevant test is whether the petitioner has raised the changed circumstance at the first opportunity to do so.” Rather than supporting its theory that changed circumstances can support a request for reconsideration filed after the applicable statutory deadline, the single case PMCM cites, a 1979 Commission order, relates not to the filing of petitions for reconsideration after the statutory deadline but instead to the circumstances under which parties may seek reconsideration of a Commission order denying an application for review. Section 1.429(b)(1) sets forth the limited circumstances in which new matter raised in a timely petition for reconsideration will be considered. It does not and cannot supersede the statutorily established deadline for the filing of petitions for reconsideration, which is set forth in Section 405 of the

Act and reflected in Section 1.429(d) of the Commission’s rules.<sup>3</sup>

For the foregoing reasons, PMCM’s argument that the Petition was timely filed because of its submission within 30 days of the release of the *Seaford MO&O on Further Reconsideration* is without merit. We therefore affirm the Bureau’s dismissal of the Petition and deny the AFR. In light of our denial of the AFR, the Motion to Dismiss and associated pleadings are moot. We therefore dismiss these filings.

*Accordingly, it is ordered* That, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(5), and § 1.115(g) of the Commission’s rules, 47 CFR 1.115(g), the Application for Review IS DENIED.

*It is further ordered* That, pursuant to section 4(i)–(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), and § 1.41 of the Commission’s rules, 47 CFR 1.41, the Motion to Dismiss, Request for Leave to File Motion to Dismiss, and Reply to Opposition to Motion to Dismiss of Western Pacific Broadcast, LLC, and the Opposition to Motion to Dismiss, Comments in Response to Reply to Opposition to Motion to Dismiss, and Request for Leave to File Comments in Response to Reply to Opposition to Motion to Dismiss of PMCM TV, LLC, ARE DISMISSED as moot.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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**BILLING CODE 6712–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 48 Parts 301, 303 and 333

#### Notice of Adoption of the Health and Human Services Acquisition Regulations (HHSAR) and OIG Class Deviations

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** HHS OIG adoption of the HHSAR, and deviation from three clauses.

**SUMMARY:** This announcement establishes that the OIG contracting activity will follow the requirements of the HHSAR, subject to three deviations establishing that OIG personnel shall seek legal guidance from the Office of

<sup>3</sup> There is no exception in section 1.429(d) for late-filed petitions based on new information nor any other exception.

Counsel to the Inspector General instead of the Office of the General Counsel.

**DATES:** These deviations are effective on August 26, 2016.

**FOR FURTHER INFORMATION CONTACT:** Brian Hildebrandt, Office of Counsel to the Inspector General, Office of Inspector General, (202)205–9493.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Notice is hereby given that the Office of Inspector General (OIG) adopts the Health and Human Services Acquisition Regulations (HHSAR) as issued in the Code of Federal Regulations (CFR) as chapter 3 of title 48; as promulgated by the Assistant Secretary for Financial Resources (ASFR) under the authority of 5 U.S.C. 301 and section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 121(c)(2)), and as delegated by the Secretary.

In addition, by the authority vested in the Senior Procurement Executive (SPE) in accordance with 48 CFR chapter 3, section 301.401 of the HHSAR, and 48 CFR chapter 1, section 1.401 of the Federal Acquisition Regulations (FAR), I execute three class deviations from the HHSAR to ensure compliance with section 3(g) of the Inspector General Act. These deviations establish the OIG shall make use of the Office of Counsel to the Inspector General (OCIG), and not Office of the General Counsel (OGC), for the purposes of HHSAR sections 301.602–3; 303.203; & 333.102(g)(1); and further reaffirm the requirement that OCIG be consulted when the HHSAR and/or FAR require consultation with legal counsel.

Dated: August 2, 2016.

**Joanne M. Chiedi,**

*Principal Deputy Inspector General, Senior Procurement Executive for OIG.*

[FR Doc. 2016–18790 Filed 8–25–16; 8:45 am]

**BILLING CODE 4152–01–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 150306232–6736–02]

**RIN 0648–BE96**

#### Fisheries of the Northeastern United States; Monkfish; Framework Adjustment 9

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

**ACTION:** Final rule.

**SUMMARY:** We are partially approving Framework Adjustment 9 to the Monkfish Fishery Management Plan. This action is necessary to better achieve the goals and objectives of the management plan and achieve optimum yield. It is intended to increase monkfish landings by enhancing the operational and economic efficiency of existing management measures.

**DATES:** This rule is effective August 26, 2016.

**FOR FURTHER INFORMATION CONTACT:** Allison Murphy, Fishery Policy Analyst, (978) 281-9122.

**SUPPLEMENTARY INFORMATION:**

**Background**

The monkfish fishery is jointly managed by the New England and the Mid-Atlantic Fishery Management Councils under the Monkfish Fishery

Management Plan (FMP). The fishery extends from Maine to North Carolina from the coast out to the end of the continental shelf. The Councils manage the fishery as two management units, with the Northern Fishery Management Area (NFMA) covering the Gulf of Maine and northern part of Georges Bank (GB), and the Southern Fishery Management Area (SFMA) extending from the southern flank of GB through Southern New England (SNE) and into the Mid-Atlantic (MA) Bight to North Carolina.

The monkfish fishery has not fully harvested the available annual catch target since fishing year 2011, particularly in the NFMA where the under-harvest has been more substantial. As a result, the fishery has not been achieving optimum yield in either area. The Councils developed Framework 9 to enhance the operational

efficiency of existing management measures in an effort to better achieve optimum yield. Because this action modifies some requirements for Northeast (NE) multispecies sector vessels, it is also considered Framework Adjustment 54 to the NE Multispecies FMP.

On June 23, 2016, we published a rule (81 FR 40838) proposing the measures included in Framework 9, and solicited comment through July 8, 2016. The Councils took final action on Framework 9 during summer 2015 and formally submitted it to us in February 2016. The proposed rule included three measures. This rule approves two measures and disapproves one measure. For more information on these measures, and the rationale for approval or disapproval, please refer to Approved Measures and Disapproved Measures below.

TABLE 1—STATUS OF MEASURES IN THIS RULE

Status	Measure	Area affected
Approved .....	Monkfish Possession Limits .....	NFMA.
Approved .....	Minimum Mesh Requirements and Possession Restrictions .....	SFMA.
Disapproved .....	Northeast Multispecies Days-at-sea Declaration Flexibility .....	NMFA.

**Approved Measures**

*1. Monkfish Possession Limits in the NFMA*

This rule eliminates the monkfish possession limit for monkfish Category C and D permitted vessels (referred to as Category C and D vessels in this section) fishing under both a NE multispecies and monkfish day-at-sea (DAS) in the NFMA. This measure is designed to

help increase monkfish landings and better achieve the annual catch target caught in the NFMA.

Possession limits differ based on the type of DAS being used by a vessel. By eliminating the trip limit for a vessel fishing under both a NE multispecies and monkfish DAS, we are adding another tier to the possession limit system without changing the existing possession limits for a vessel fishing on

a NE multispecies DAS or a monkfish DAS. A Category C or D vessel that is fishing under both a NE multispecies and a monkfish DAS in the NFMA may now retain an unlimited amount of monkfish. Table 2 includes a summary of the existing and new monkfish tail weight possession limits for a vessel fishing under the various DAS available in the NFMA.

TABLE 2—EXISTING AND NEW MONKFISH TAIL WEIGHT POSSESSION LIMITS FOR MONKFISH CATEGORY C AND D PERMITTED VESSELS FISHING ON A DAS IN THE NFMA

	DAS Type	Category C	Category D
Existing Measures .....	NE Multispecies A only .....	600 lb (272.16 kg) .....	500 lb (226.80 kg).
	Monkfish only .....	1,250 lb (566.99 kg) .....	600 lb (272.16 kg).
New Measure .....	NE Multispecies A and Monkfish	Unlimited .....	Unlimited.

**Note:** Tail weight × 2.91 = whole weight.

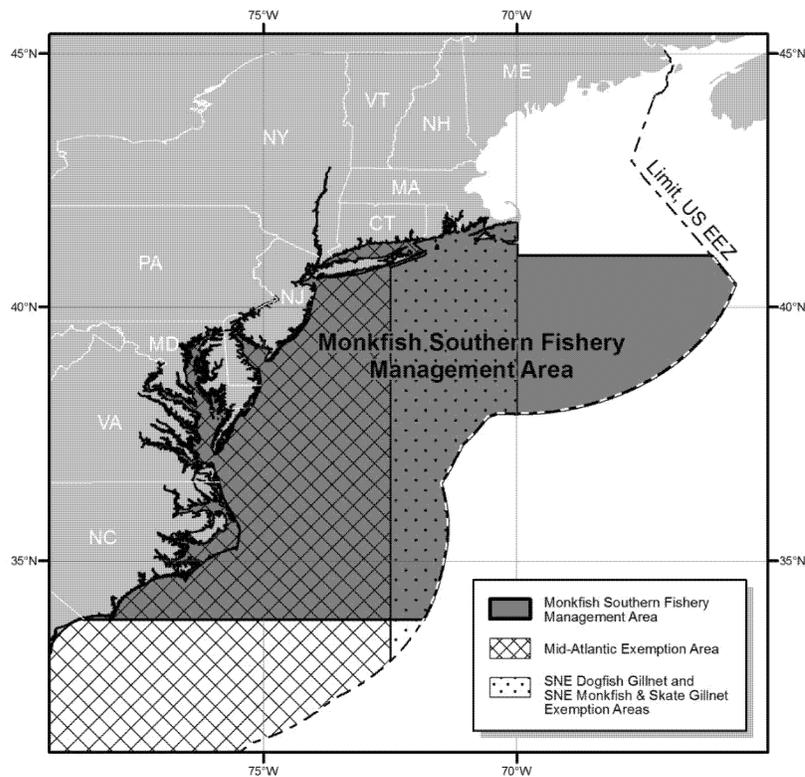
A Category C or D vessel is still required to declare a trip at the dock under a NE multispecies A DAS with the option to declare a monkfish DAS while at sea, but can then declare a monkfish DAS while at sea in order or to be exempt from the monkfish

possession limits. Alternately, a Category C or D vessel can declare a concurrent NE Multispecies A DAS and a monkfish DAS at the dock prior to starting a trip in order or to be exempt from the monkfish possession limits.

*2. Minimum Mesh Size Requirements and Possession Limits in the SFMA*

We are revising minimum mesh size and possession restrictions in different parts of SFMA (see Figure 1) to increase operational flexibility.

**Figure 1. SNE Dogfish, Monkfish, and Skate Gillnet Exemption Area and Mid-Atlantic Exemption Area**



This rule implements a measure that allows a Category C or D vessel fishing under both a NE multispecies and a monkfish DAS in the SFMA to use 6.5-inch (16.5-cm) roundfish gillnets. This rule also allows any monkfish-permitted vessel fishing on a monkfish-only DAS in the Mid-Atlantic Exemption Area to

use 5-inch (12.7-cm) roundfish gillnets in the Mid-Atlantic Exemption Area. Finally, monkfish-permitted vessels fishing on a monkfish-only DAS in either the SNE Dogfish Gillnet Exemption Area or the SNE Monkfish and Skate Gillnet Exemption Area may retain both monkfish and dogfish on the

same trip when declared into either area. This measure also limits a vessel to using 50 roundfish gillnets in the SNE Dogfish and the Mid-Atlantic Exemption Areas. Table 3 summarizes the approved measures (highlighted in bold) and also includes existing seasonal, gear, and DAS requirements.

**Table 3. Summary of Approved (Bold) and Other Existing Requirements in the Monkfish****SFMA**

	NE Multispecies DAS anywhere in the SFMA	SNE Dogfish Gillnet Exemption Area	SNE Monkfish and Skate Gillnet Exemption Area	Mid-Atlantic Exemption Area
Minimum gillnet mesh	<b>6.5 inches (16.51 cm) for standup nets</b>	6 inches (15.24 cm) for standup nets	10 inches (25.4 cm) for all nets	<b>5 inches (12.7 cm) for standup nets</b>
DAS	<b>NE multispecies and monkfish</b>	Monkfish	Monkfish	<b>Monkfish</b>
Season	Year-round	May 1 – October 31	Year-round	<b>Year-round</b>
Gear Limits	<u>All Trip gillnet vessels:</u> Unlimited <u>Day gillnet vessel in the GB RMA:</u> 50 gillnets <u>Day gillnet vessel in the SNE RMA:</u> 75 gillnets <u>Day gillnet vessel in the MA RMA:</u> 75 gillnets	<u>Category A/B:</u> 160 gillnets <u>Category C/D:</u> 150 gillnets <u>Roundfish gillnet limit:</u> 50 gillnets	<u>Category A/B:</u> 160 gillnets <u>Category C/D:</u> 150 gillnets	<b><u>Category A/B:</u> 160 gillnets <u>Category C/D:</u> 150 gillnets <u>Roundfish gillnet limit:</u> 50 gillnets</b>
Regulatory change to possess both Monkfish and Dogfish	No	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>

A vessel taking advantage of these smaller minimum mesh size requirements must still comply with all other requirements of fishing in the SFMA or in the Exemption Areas. Existing monkfish possession limits for vessels issued a limited access monkfish permit and fishing in the SFMA would remain the same.

**Disapproved Measure***NE Multispecies DAS Declaration Flexibility Measure*

We are disapproving the Framework 9 measure that would have allowed a Monkfish Category C and D vessel enrolled in a NE multispecies sector, fishing exclusively in the NFMA under either a NE multispecies non-DAS sector trip or a monkfish-only DAS, to declare a NE multispecies A DAS while at sea through the vessel monitoring system (VMS). We are disapproving this measure because it is inconsistent with National Standards 5 and 7 and the NE Multispecies FMP. Specifically, our disapproval is based on this measure's limited utility for fishery participants, poor cost-to-benefit ratio, enforcement concerns, and inconsistency with the NE multispecies FMP at-sea monitoring

program. A full description of our rationale is provided below.

This measure was intended to help increase operational flexibility and potentially increase monkfish landings in the NFMA. However, as proposed by the Councils, it would create a loophole that would allow a vessel to circumvent existing groundfish sector at-sea monitoring requirements, which would be inconsistent with the NE Multispecies FMP. We have determined that the measure itself and the proposed remedy to the monitoring loophole described in the proposed rule are not consistent with National Standards 5 and 7 of the Magnuson-Stevens Fishery Conservation and Management Act because administrative costs and burdens are not offset by meaningful benefits to the industry.

We raised several concerns with this measure in the proposed rule (see 81 FR 40838, 40839) and noted that we intended to further evaluate the potential cost/benefit of providing this at-sea declaration flexibility, as well as review comments, when considering the approvability of this measure. We specifically requested comments on this measure and our concerns in the proposed rule and received two

comments generally supporting this measure from industry members. These comments provided no specific feedback on the monitoring loophole, justifications for the cost/benefits, or our request to address concerns related to approvability. In addition, we had extensive conversations about this measure with the New England Council during the regulatory deeming process. The New England Council did not comment in support of the measure, nor did the New England Council address the multiple concerns we raised.

We are disapproving this DAS flexibility measure for the following reasons:

1. Allowing a vessel to declare a NE multispecies A DAS after starting a trip on a monkfish-only DAS is inconsistent with the NE Multispecies FMP. This measure would have allowed a groundfish sector vessel to circumvent existing NE multispecies pre-trip notification requirements for deploying industry-funded at-sea monitors. Monitoring is a fundamental requirement of the NE multispecies sector system because it allows the sectors and NMFS to adequately monitor the catching and discards made by participating vessels.

2. It is inconsistent with National Standards 5 and 7 of the Magnuson-Stevens Act. If approved, the costs of this measure and potential remedies to the monitoring loophole far outweigh any potential benefits to the industry. This measure would have required VMS changes that were estimated by the agency to cost approximately \$100,000 based on comparisons of other similar programmatic changes that required VMS vendors to reprogram for additional declaration codes. Other database changes in the pre-trip notification system and to accommodate bycatch moderating would also have been needed to address the loophole created in the NE multispecies monitoring program. These changes are not reflected in the \$100,000 VMS change estimate.

Further, this measure would not have provided as many benefits as first anticipated. Framework 9 estimated that only a small percent (1.6 percent) of vessels approached applicable trip limits for non-DAS sector trips and monkfish-only trips in recent fishing years, indicating that few vessels would realize a benefit from this measure. During its development, this measure underwent several iterative changes wherein the universe of vessels that could potentially use the provision was reduced. Many of these changes were designed to address the concern raised in the proposed rule. Presently, sector vessels may only use monkfish-only DAS in an exempted fishery. The only exempted fishery that overlaps with the NFMA is in the Gulf of Maine/Georges Bank Dogfish and Monkfish Gillnet Exemption Area, as described in § 648.80(a)(13). Given that the majority of the fleet in the NFMA fishes with trawl gear and cannot take advantage of this opportunity because they are excluded from this exempted fishery, we were concerned that only a small number of vessels that use gillnet gear would benefit from this flexibility. In fact, additional agency analysis indicates that, in the last three years, only three vessels took four trips that would have been eligible to use the monkfish-only flexibility. These four trips resulted in landings worth approximately \$12,000. National Standard 5 and 7 require that management measures consider efficiency in the utilization of fishery resources and minimize costs and avoid unnecessary duplication. Given this limited benefit and the costs associated with this DAS declaration flexibility, we have determined that this measure is inconsistent with National Standards 5 and 7.

In addition, we also raised concern in the proposed rule that allowing this measure would create enforcement concerns with regulatory discard requirements. A vessel declared out of the NE multispecies fishery and fishing in an exempted fishery is prohibited from retaining NE multispecies (must discard all groundfish); whereas a vessel fishing under a NE multispecies DAS is required to retain all legal size NE multispecies. If we had approved this measure, a vessel would have begun a trip discarding all NE multispecies, only to then be required to retain all legal-sized NE multispecies after declaring a NE multispecies DAS. There would be no way to monitor these discard requirements unless each trip making use of this provision was monitored.

#### **Corrections and Clarifications to Existing Regulations**

This final rule corrects a number of inadvertent errors, omissions, and ambiguities in existing regulations in order to ensure consistency with, and accurately reflect the intent of, previous actions under the FMP, or to more effectively administer and enforce existing and new provisions. These clarifications are being taken under the authority provided to the Secretary of Commerce in section 305(d) of the Magnuson-Stevens Act. The following measures are listed in the order in which they appear in the regulations.

In § 648.10, paragraphs (b)(3), (g)(1), (g)(3), and (g)(3)(i) through (ii) are revised to enhance readability and more clearly state the regulatory requirements.

In § 648.92, paragraph (b)(1)(i) is revised to enhance readability and more clearly state the regulatory requirements. A reference to the DAS requirements in the SFMA and adjustment for gear conflicts has also been removed, as these references are unnecessary. The reference to DAS requirement in the SFMA in § 648.92(b)(1)(ii) is not needed because that referenced section further explains how the overall DAS allocation may be used. The reference to adjustment for gear conflicts in § 648.96(b)(3) states that the Councils may develop recommendations to address gear conflicts. This reference is unnecessary because those measures would be captured in the regulations and appropriately cross-referenced.

In § 648.94, paragraph (b)(3)(i) is revised to enhance readability and more clearly state the regulatory requirements. A reference to Category F permits has also been deleted for clarity because it may cause confusion with regard to the possession limits for

Category F permits. Possession limit requirements for Category F permits are more clearly outlined in § 648.95.

#### **Comments and Responses**

Our proposed rule solicited comments for 15 days through July 8, 2016. We received nine comments from fishing industry members. A summary of the comments and our responses is provided below.

*Comment 1:* Six letters supported eliminating the trip limit for Category C and D vessels fishing under both a NE multispecies and monkfish DAS in the NFMA. One stated that this measure was needed to help more fully harvest the quota. Another stated that this measure will help increase efficiency, decrease discards, and will promote the conservation of other stocks by promoting harvest of monkfish.

*Response:* We agree and are approving this measure. The Councils specifically designed this measure to “increase monkfish landings to more fully utilize the annual catch target in the NFMA.” The Councils were also optimistic that this measure could benefit other fisheries by noting that it “could provide additional fishing revenue for groundfish vessels to help offset expected fishing revenue reductions associated with reduced groundfish quotas in NFMA in the near future . . .” While we cannot be certain that this measure will decrease discards, we recognize the potential benefit and encourage the Council to continue developing measures that reduce discards and discard mortality, as required by National Standard 9.

*Comment 2:* Three letters opposed removing the trip limit for Category C and D vessels fishing under both a NE multispecies and monkfish DAS in the NFMA. These letters based this recommendation on overall questions about the stock assessment and uncertainty about growth rates, stock definition, and stock distribution.

*Response:* The Northeast Fisheries Science Center is in the process of completing a monkfish operational assessment update. This assessment process has raised questions about the validity of monkfish aging information included in previous stock assessments. These important issues could change the results of the ongoing or future assessments. The Councils will need to evaluate these future results, set catch advice, and adjust management measure taking this new information into account. Still, the best available scientific information indicates that the monkfish stock is not overfished, nor subject to overfishing. Further, the fishery has been under-harvested the

past several years. We believe that eliminating the trip limit for Category C and D vessels fishing under both a NE multispecies and monkfish DAS in the NFMA is warranted and presents little to no risk to the northern stock.

Moreover, should this measure increase catch to levels above the annual catch target, the FMP has accountability measures designed to prevent recurring overages.

*Comment 3:* Three letters supported revising minimum mesh size and possession requirements in the SFMA, two of which also noted support for the 50-net limit in certain exemption areas. These letters noted that these changes help align the regulations with historic practices of the fishery. Two letters also spoke to timing: One letter requested the regulations be approved by October when dogfish become available, while the other requested that these administrative changes be made as soon as possible.

*Response:* We are approving the suite of SFMA mesh and possession measures, sharing the Council's rationale that this measure "increases operational flexibility of monkfish operations by allowing vessels to target both monkfish and dogfish using different gear types when on a monkfish DAS." Monkfish are not overfished, nor subject to overfishing, and removing these administrative burdens to better align current regulations with historic practices will help the fishery better achieve optimum yield. To expedite the effective date of these measures, we are waiving the 30-day delay in effectiveness because this rule relieves restrictions. For more information on this waiver, please refer to the Classification section below.

*Comment 4:* Two letters generally supported the measure that would have allowed a Monkfish Category C and D vessel enrolled in a NE multispecies sector fishing exclusively in the NFMA under either a NE multispecies non-DAS sector trip or a monkfish-only DAS to declare a NE multispecies A DAS while at sea.

*Response:* As discussed above, we have disapproved this measure. We raised several concerns with the measure, noting that we would evaluate available data on potential use, the costs of implementation, and any public comments when considering the approvability of the measure. These two comments were very general and provided no additional information to address our noted concerns including the monitoring loophole, cost/benefits, or our request to address concerns related to approvability or justification in support of the measure. As discussed

in Disapproved Measure, we have determined that this measure is inconsistent with the NE Multispecies FMP and National Standards 5 and 7, and have disapproved it.

#### Classification

The Administrator, Greater Atlantic Region, NMFS, determined that Framework 9 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.

Because this rule relieves a restriction by increasing the trip limit in the NMFA and liberalizing gear and possession restrictions in the SFMA, it is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1). The Councils developed these measures to increase monkfish landings and associated fishing revenue to more effectively achieve optimum yield in the fishery. Accordingly, delaying this action for 30-days is contrary to the public interest, because it would unnecessarily delay the industry's ability to take advantage of increased opportunities to catch and land monkfish and benefit from the associated economic benefits of higher monkfish landings. Further, since this rule imposes no further restrictions on the monkfish fishery that would alter existing fishing practices or require affected entities to acquire additional equipment, there is no need to delay implementation of this action to provide affected entities sufficient time to prepare or comply with the measures of this rule. Thus, there is good cause under 5 U.S.C. 553(d)(3) to waive the delay in effectiveness for this action.

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

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

Pursuant to the Regulatory Flexibility Act, and prior to July 1, 2016, a certification was developed for this regulatory action using SBA's former size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. Under the SBA's size standards, 16 shellfish businesses were determined not to be small. The new standard could result in a few more commercial shellfish businesses being considered small. In addition, the new standard could result in fewer commercial finfish businesses being considered small. Previously, all finfish businesses (206 businesses) were classified as small businesses. Based on analysis in the environmental assessment, we do not expect any of these finfish businesses to be classified as large under the new size standards. However, NMFS has determined that the new size standard does not affect its decision to certify this regulatory action. The action results in minimal, potentially slightly positive impacts on all regulated entities regardless of size.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 22, 2016.

**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 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 § 648.10, revise paragraphs (b)(3), (g)(1), (g)(3) introductory text, and (g)(3)(i) and (ii) to read as follows:

#### § 648.10 VMS and DAS requirements for vessel owners/operators.

\* \* \* \* \*

(b) \* \* \*

(3) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this section using VMS, unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section;

\* \* \* \* \*

(g) \* \* \*

(1) The owner or authorized representative of a vessel that is required to or elects to use VMS, as

specified in paragraph (b) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip except:

- (i) If notified by letter, pursuant to paragraph (e)(1)(iv) of this section, or
- (ii) The vessel is a scallop vessel and is exempted, as specified in paragraph (f) of this section.

\* \* \* \* \*

(3) A vessel operator cannot change any aspect of a vessel's VMS activity code outside of port, except as follows:

(i) An operator of a NE multispecies vessel is authorized to change the category of NE multispecies DAS used (*i.e.*, flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided at § 648.85(a)(3)(ii)(A).

(ii) An operator of a vessel issued both a NE multispecies permit and a monkfish permit are authorized to change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS, while remaining subject to the to the NE multispecies DAS usage requirements under § 648.92(b)(1)(i), during the course of a trip, as provided at § 648.92(b)(1)(iii)(A).

\* \* \* \* \*

■ 3. In § 648.14, revise paragraph (m)(2)(i) to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

- (m) \* \* \*
- (2) \* \* \*

(i) Fish with or use nets with mesh size smaller than the minimum mesh size specified in § 648.91(c) while fishing under a monkfish DAS, except as authorized by § 648.91(c)(1)(iii).

\* \* \* \* \*

■ 4. In § 648.80,:

- a. Revise the introductory text to paragraph (b)(2)(iv);
- b. Revise paragraphs (b)(6)(i)(A), (b)(7)(i)(A) and (B);
- c. Revise the introductory text to paragraph (c)(2)(v); and
- d. Revise paragraph (c)(5).

The revisions read as follows:

**§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*

(iv) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and

available for immediate use as defined in § 648.2, when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), to vessels fishing with gillnet gear under a monkfish-only DAS in the SNE Dogfish Gillnet Exemption Area in accordance with the provisions specified under paragraph (b)(7)(i)(A) of this section; to vessels fishing with gillnet gear under a monkfish-only DAS in the Mid-Atlantic Exemption Area in accordance with the provisions specified under paragraph (c)(5)(ii) of this section; or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Day gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

\* \* \* \* \*

- (6) \* \* \*
- (i) \* \* \*

(A) A vessel fishing under the SNE Monkfish and Skate Gillnet Exemption may only fish for, possess on board, or land monkfish as specified in § 648.94(b), spiny dogfish up to the amount specified in § 648.235, and other incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

\* \* \* \* \*

- (7) \* \* \*
- (i) \* \* \*

(A) A vessel fishing under the SNE Dogfish Gillnet Exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (b)(3) of this section, unless fishing under a monkfish DAS. A vessel fishing under this exemption while on a monkfish-only DAS may also fish for, possess on board, and land monkfish up to the amount specified in § 648.94.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net. A vessel fishing under this exemption while on a monkfish-only DAS may not fish with, possess, haul, or deploy more than 50 roundfish gillnets, as defined in § 648.2.

\* \* \* \* \*

- (c) \* \* \*-
- (2) \* \* \*

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use as defined in § 648.2, when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout

the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), to vessels fishing with gillnet gear under a monkfish-only DAS in the Mid-Atlantic Exemption Area in accordance with the provisions specified under paragraph (c)(5)(ii) of this section, or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

\* \* \* \* \*

(5) *MA Exemption Area.* (i) The MA Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(ii) *Monkfish/Spiny Dogfish Exempted Gillnet Fishery.* A vessel fishing on a monkfish-only DAS may fish with, use, or possess gillnets in the MA Exemption Area with a mesh size smaller than the minimum size specified in paragraph (b)(2)(iv) or (c)(2)(v) of this section, provided the vessel complies with the following requirements:

(A) *Number of nets.* Notwithstanding the provisions specified in paragraphs (c)(2)(v)(A) and (B) of this section and § 648.92(b)(8), a vessel fishing on a monkfish-only DAS within the MA Exemption Area may not fish with, possess, haul, or deploy more than 50 roundfish gillnets, as defined in § 648.2.

(B) *Minimum mesh size.* The minimum mesh size for any roundfish gillnet not stowed and available for immediate use by a vessel fishing on a monkfish-only DAS within the MA Exemption Area is 5 inches (12.7 cm) throughout the entire net.

(C) *Possession limits.* A vessel fishing on a monkfish-only DAS within the MA Exemption Area may fish for, possess on board, or land monkfish up to the amount specified in § 648.94, spiny dogfish up to the amount specified in § 648.235, and other incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

\* \* \* \* \*

■ 5. In § 648.91, revise paragraph (c)(1)(iii) 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:

(A) The owner or operator of a limited access NE multispecies vessel fishing

under a NE multispecies category A DAS with gillnet gear in the NFMA changes the vessel's DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip in accordance with the provisions specified under § 648.92(b)(1)(iii);

(B) A vessel issued a Category C or D limited access monkfish permit is fishing under both a monkfish and NE multispecies Category A DAS in the SFMA using roundfish gillnets, as defined at § 648.2, with 6.5-inch (16.5-cm) diamond mesh;

(C) A vessel issued a limited access monkfish permit is fishing on a monkfish-only DAS in the Mid-Atlantic Exemption Area using roundfish gillnets with a minimum mesh size of 5 inches (12.7 cm) in accordance with the provisions specified under § 648.80(c)(5); or

(D) A vessel issued a limited access monkfish permit is fishing on a monkfish-only DAS in the Southern New England Dogfish Exemption Area using roundfish gillnets with a minimum mesh size of 6 inches (15.2 cm) in accordance with the provisions specified under § 648.80(b)(7).

\* \* \* \* \*

■ 6. In § 648.92, revise paragraph (b)(1)(i) to read as follows:

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

\* \* \* \* \*

- (b) \* \* \*
- (1) \* \* \*

(i) *General provision.* Each vessel issued a limited access monkfish permit shall be allocated 46 monkfish DAS each fishing year, which must be used in accordance with the provisions of this paragraph (b), unless the permit 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 to each limited access monkfish permit shall be reduced by the amount calculated in paragraph (b)(1)(v) of this section for the research DAS set-aside. Unless otherwise specified in paragraph (b)(2) of this section or under this subpart F, a vessel issued a limited access NE multispecies or limited access sea scallop permit that is also issued a

limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized.

\* \* \* \* \*

■ 7. In § 648.94, revise paragraphs (b)(1) and (b)(3)(i) 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 vessels.* A limited access monkfish Category A vessel that fishes exclusively in the NFMA under a monkfish DAS may land up to 1,250 lb (567 kg) tail weight or 3,638 lb (1,650 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 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *Category B vessels.* A limited access monkfish Category B vessel that fishes exclusively in the NFMA under a monkfish DAS may land up to 600 lb (272 kg) tail weight or 1,746 lb (792 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 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iii) *Category C vessels.* A limited access monkfish Category C vessel that fishes exclusively in the NFMA under a monkfish-only DAS may land up to 1,250 lb (567 kg) tail weight or 3,638 lb (1,650 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 2.91). A limited access monkfish Category C vessel that fishes exclusively in the NFMA under both a monkfish and NE multispecies DAS may possess and land an unlimited amount of monkfish. For every 1 lb (0.45 kg) of tail only weight landed, the

vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iv) *Category D vessels.* A limited access monkfish Category D vessel that fishes exclusively in the NFMA under a monkfish-only DAS may land up to 600 lb (272 kg) tail weight or 1,746 lb (792 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 2.91). A limited access monkfish Category D vessel that fishes exclusively in the NFMA under both a monkfish and NE multispecies DAS may possess and land an unlimited amount of monkfish. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

\* \* \* \* \*

- (3) \* \* \*

(i) *NFMA.* Unless otherwise specified in paragraph (b)(1) of this section, a vessel issued a limited access monkfish Category C permit that fishes under a NE multispecies DAS, and not a monkfish DAS, exclusively in the NFMA may land up to 600 lb (272 kg) tail weight or 1,746 lb (792 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 2.91). A vessel issued a limited access monkfish Category D permit that fishes under a NE multispecies DAS, and not a monkfish DAS, exclusively in the NFMA may land up to 500 lb (227 kg) tail weight or 1,455 lb (660 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 2.91). A vessel issued a limited access monkfish Category C, D, or F permit participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), is also subject to the incidental landing limit specified in paragraph (c)(1)(i) of this section on such trips.

\* \* \* \* \*