

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No.: 200910–0238]

RIN 0648–BJ79

**Fisheries of the Northeastern United States; Monkfish; Framework Adjustment 12**

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

**ACTION:** Final rule.

**SUMMARY:** We are implementing specifications submitted by the New England and Mid-Atlantic Fishery Management Councils in Framework Adjustment 12 to the Monkfish Fishery Management Plan. This action sets monkfish specifications for fishing year 2020 and projects specifications for the 2021 and 2022 fishing years. This action is needed to establish allowable monkfish harvest levels that will prevent overfishing.

**DATES:** These final specifications for the 2020 monkfish fishery are effective October 19, 2020.

**ADDRESSES:** Copies of the Framework 12 document, including the Regulatory Flexibility Act Analysis and other supporting documents for the specifications, are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The specifications document is also accessible via the internet at: <https://www.nefmc.org/management-plans/monkfish>.

[www.nefmc.org/management-plans/monkfish](https://www.nefmc.org/management-plans/monkfish).

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

**SUPPLEMENTARY INFORMATION:**

**Background**

The New England and the Mid-Atlantic Fishery Management Councils jointly manage the monkfish fishery under the Monkfish Fishery Management Plan (FMP). The New England Council has the administrative lead for the 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, and the Southern Fishery Management Area (SFMA) extending from the southern flank of Georges Bank through Southern New England and into the Mid-Atlantic Bight to North Carolina.

The monkfish fishery is primarily managed by landing limits and a yearly allocation of monkfish days-at-sea calculated to enable vessels participating in the fishery to catch, but not exceed, the target total allowable landings (TAL) and the annual catch target (ACT). The ACT is the TAL plus an estimate of expected discards, for each management area. Both the ACT and the TAL are calculated to maximize yield in the fishery over the long term.

**Approved Measures**

*1. Specifications*

We are approving adjustments to the NFMA and SFMA quotas for fishing

year 2020 (Table 1), based on the Councils’ recommendations. We are also projecting these quotas for fishing years 2021 and 2022. In August 2019, the New England Council’s Scientific and Statistical Committee (SSC) recommended acceptable biological catch levels in the NFMA and SFMA for fishing years 2020–2022. The Councils approved the specifications during their fall 2019 meetings. Both Councils’ recommendations for the 2020–2022 monkfish specifications are based on the results of the 2019 assessment update and the recommendations of the SSC.

The Councils recommended a 10-percent increase in the acceptable biological catch and annual catch limit in the NFMA and status quo acceptable biological catch and annual catch limit in the SFMA, when compared to the 2017–2019 specifications. Discards, calculated using a moving average of the most recent three years of data, increased in both areas, but more significantly in the SFMA. Data indicate that this substantial increase is due to the large 2015 monkfish year class being discarded by scallop dredge gear. After accounting for discards, the Councils recommend a 5-percent increase in the TAL for the NFMA and a 35-percent decrease in the TAL for the SFMA. Despite these changes, both Councils recommend no adjustments to day-at-sea allocations or landing limits. The small increase in the NFMA is expected to convert fish that were discarded in previous fishing years into landings. The Councils do not expect the lower SFMA TAL to be constraining because SFMA landings have been lower than the 2020 TAL since 2008.

TABLE 1—APPROVED FRAMEWORK 12 SPECIFICATIONS

Catch limits	NFMA	SFMA		
	2020–2022 specs (mt)	Percent change from 2019	2020–2022 specs (mt)	Percent change from 2019
Acceptable Biological Catch .....	8,351	10	12,316	0
Annual Catch Limit .....	8,351	10	12,316	0
Management Uncertainty .....	3 percent	.....	3 percent	.....
Annual Catch Target (Total Allowable Landings + discards) .....	8,101	10	11,947	0
Discards .....	1,477	.....	6,065	107
Total Allowable Landings .....	6,624	5	5,882	–35

At the end of each fishing year, we evaluate catch information and determine if the quota has been exceeded. If a quota is exceeded, the regulations at 50 CFR 648.96(d) require the Councils to revise the monkfish ACT if it is determined that the annual catch

limit was exceeded in any given year, or for NMFS to revise the monkfish ACT if the Councils fail to take action. We would publish a notice in the **Federal Register** of any revisions to these proposed specifications if an overage occurs. We expect, based on preliminary

2019 year end accounting, that no adjustment is necessary. We will provide notice of the 2021 and 2022 quotas prior to the start of each respective fishing year.

*2. Regulatory Corrections*

Using our authority under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, we are clarifying trip declaration requirements at 50 CFR 648.10 for vessels making trip declarations through the interactive voice response system. Regulations require vessels using a vessel monitoring system to submit a trip declaration less than 1 hour prior to leaving port. No timeframe is specified in the regulations for vessels using the interactive voice response system. This rule clarifies that declarations using either system must be made less than 1 hour prior to leaving port. This requirement is intended to make the declaration requirements consistent for all monkfish fishery participants.

Additionally, we are using the same authority to correct the monkfish incidental catch limits in four Northeast multispecies exempted fisheries specified in § 648.80. In the final rule implementing Amendment 5 to the Monkfish FMP (76 FR 30265; May 25, 2011), we updated the tail-to-whole-weight (landed) conversion factor from 3.32 to 2.91, and applied this updated conversion to the monkfish possession limits in § 648.94. However, we inadvertently failed to update the incidental monkfish possession limits for the Northeast multispecies exempted fisheries at §§ 648.80(a)(6)(1)(B), (a)(10)(i)(D), (b)(3)(ii), and (h)(3)(iii)(A). Through this final rule, we are correcting the incidental monkfish whole weight possession limits using the 2011 conversion factor.

**Comments and Responses**

The public comment period for the proposed rule (85 FR 39157; June 30, 2020) ended on July 30, 2020. No comments were received on the proposed rule.

**Changes From the Proposed Rule**

There are no changes from the proposed rule.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Monkfish FMP, Framework 12, provisions of the Magnuson-Stevens Act, and other applicable law.

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

This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified

to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Fisheries, Fishing.

Dated: September 11, 2020.

**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 paragraph (h)(1) introductory text to read as follows:

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

(h) \* \* \*

(1) Less than 1 hr prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in paragraph (h) of this section, or an occasional scallop permit as specified in this paragraph (h), and, less than 1 hr prior to leaving port, for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the call-in system and providing the following information:

\* \* \* \* \*

■ 3. In § 648.80, revise paragraphs (a)(6)(i)(B), (a)(10)(i)(D), (b)(3)(ii), and (h)(3)(iii)(A) to read as follows:

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

\* \* \* \* \*

(a) \* \* \*  
(6) \* \* \*  
(i) \* \* \*

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Atlantic herring, up to the amount specified in § 648.204; longhorn sculpin; squid, butterfish, and Atlantic mackerel, up to the amounts specified in § 648.26; spiny dogfish, up to the amount specified in § 648.235; red hake, up to the amount specified in § 648.86(d), monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/146 lb (66 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

\* \* \* \* \*

(10) \* \* \*  
(i) \* \* \*

(D) *Incidental species provisions.* The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/146 lb (66 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

\* \* \* \* \*

(b) \* \* \*  
(3) \* \* \*

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use as defined in § 648.2, and provided that regulated species were not harvested by nets of mesh size

smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/146 lb (66 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts (except for barndoor skate and other prohibited skate species (see §§ 648.14(v)(2) and 648.322(g))—up to 10 percent, by weight, of all other species on board.

\* \* \* \* \*

- (h) \* \* \*
- (3) \* \* \*
- (iii) \* \* \*

(A) A vessel fishing in the Scallop Dredge Fishery Exemption Areas specified in paragraphs (h)(3)(i) and (ii) of this section may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per trip.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

[Docket No. 200908-0235]

RIN 0648-BJ27

**Pacific Island Fisheries; Sea Turtle Limits in the Hawaii Shallow-Set Longline Fishery**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises measures that govern interactions between the Hawaii shallow-set pelagic

longline fishery and sea turtles. This rule lowers the annual fleet interaction limit (“hard cap”) for leatherback sea turtles from 26 to 16, and removes the annual fleet hard cap for North Pacific loggerhead turtles. This rule also creates individual trip interaction limits of two leatherback and five North Pacific loggerhead turtle interactions, with accountability measures for reaching a limit. This rule provides managers and fishermen with the necessary tools to respond to and mitigate changes in North Pacific loggerhead and leatherback turtle interactions to ensure a continued supply of fresh domestic swordfish to U.S. markets, consistent with the conservation needs of these sea turtles. This action also ensures that the Hawaii shallow-set longline fishery operates in compliance with the conditions of a recent biological opinion (BiOp).

**DATES:** This rule is effective September 17, 2020.

**ADDRESSES:** Copies of Amendment 10 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP) and supporting documents are available at [www.regulations.gov](http://www.regulations.gov), or from the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, [www.wpcouncil.org](http://www.wpcouncil.org).

**FOR FURTHER INFORMATION CONTACT:** Joshua Lee, NMFS PIR Sustainable Fisheries, 808-725-5177.

**SUPPLEMENTARY INFORMATION:** The Hawaii shallow-set pelagic longline fishery primarily targets swordfish (*Xiphias gladius*) on the high seas in the North Pacific Ocean. The Council and NMFS manage the fishery under the FEP and implementing regulations, as authorized by the Magnuson-Stevens Fishery Conservation and Management Act. The fishery occasionally hooks or entangles protected species, including sea turtles. To address these interactions, NMFS has implemented conservation and management measures, including limits on the number of interactions allowed between the fishery and leatherback and North Pacific loggerhead sea turtles.

On June 26, 2019, NMFS issued a BiOp on the effects of the shallow-set fishery on marine species listed under the Endangered Species Act (ESA). The BiOp includes measures required to minimize the effects of incidental take. This rule implements some of those measures. This rule revises the annual fleet hard cap for leatherback sea turtles from 26 to 16. If the fleet reaches this limit, NMFS would close the fishery for the remainder of the calendar year. This rule also removes the annual fleet hard

cap on North Pacific loggerhead turtle interactions because it is not necessary at this time for the conservation of this species. If the fishery exceeds the Incidental Take Statement (ITS) for any species in the current valid BiOp, NMFS would reinitiate ESA Section 7 consultation for that species. Finally, this rule establishes limits of two leatherback and five loggerhead turtles per vessel per individual fishing trip. If a vessel reaches either sea turtle limit during a fishing trip, it must immediately stop fishing and return to port, and may not resume shallow-setting until it meets certain requirements. Additional restrictions apply to vessels that might reach a trip limit twice in a calendar year.

All other requirements in this fishery continue, and NMFS will continue to monitor the Hawaii shallow-set longline fishery. You may find additional background information on this action in the preamble to the proposed rule (85 FR 6131, February 4, 2020), and it is not repeated here.

**Comments and Responses**

On January 23, 2020, NMFS published a notice of availability (NOA) for Amendment 10, including an environmental assessment (EA), and request for public comments (85 FR 3889); the comment period ended March 23, 2020. On February 4, 2020, NMFS published a proposed rule that would implement the management measures described in Amendment 10 (85 FR 6131). That comment period ended on March 20, 2020. NMFS received comments from individuals, the fishing industry and non-governmental organizations, and a petition with signatures, and responds below. Additionally, NMFS received and considered all comments requesting additional minor corrections and clarifications when finalizing Amendment 10 and the EA associated with this final action.

*Comment 1:* NMFS unlawfully failed to apply the best scientific information available when it “failed” to consider a population viability analysis (PVA) model of leatherback and loggerhead trends with and without fishery mortalities. NMFS “refused” to model sea turtle trends with mortalities because it could not explain why the fisheries’ impacts would not accelerate the species’ decline. As a result, the biological opinion merely describes the proportion of the adult population and total population that the fishery is expected to kill at benchmark intervals, which is the approach invalidated in *TIRN v. NMFS*, 878 F3d 725 (9th Cir. 2017). Moreover, the Ninth Circuit has