

this paragraph, the Manager's approval letter must specifically refer to this AD.

*Replacement of MLG Shock Strut Piston Assemblies*

(h) Replace the MLG shock strut piston assemblies, left- and right-hand sides, with new or serviceable improved assemblies, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD80-32-309, Revision 01, dated April 25, 2001. Do this replacement at the applicable compliance time specified in paragraph (h)(1) or (h)(2) of this AD. Such replacement terminates the repetitive inspections required by this AD. If the MLG shock strut piston is not serialized, or the number of landings on the piston cannot be conclusively determined, consider the total number of landings on the piston assembly to be equal to the total number of landings accumulated by the airplane with the highest total number of landings in the operator's fleet.

(1) For airplanes listed in Boeing Service Bulletin MD80-32-309, Revision 01, dated April 25, 2001: Do the replacement before the accumulation of 30,000 total landings on the MLG shock strut piston assemblies, or within

5,000 landings after June 20, 2002 (the effective date of AD 2002-10-03, amendment 39-12749), whichever occurs later.

(2) For airplanes other than those identified in paragraph (h)(1) of this AD: Do the replacement before the accumulation of 30,000 total landings on the MLG shock strut piston assemblies, or within 5,000 landings after the effective date of this AD, whichever occurs later.

**Note 1:** Paragraph (a) of AD 2002-10-03, amendment 39-12749, requires the same actions as paragraph (h) of this AD.

*Actions Accomplished Previously in Accordance With Other Service Information*

(i) Accomplishment of the replacement specified in Boeing Service Bulletin MD80-32-309, dated January 31, 2000, before June 20, 2002, is considered acceptable for compliance with the requirement of paragraph (h) of this AD.

*Parts Installation*

(j) As of the effective date of this AD, no person may install an MLG shock strut piston having P/N 5935347-1 through -509 inclusive, 5935347-511, 5935347-513, or

SR09320081-3 through -13 inclusive, on any airplane.

*No Requirement To Submit Information*

(k) Although Boeing Alert Service Bulletin MD80-32A308, Revision 04, dated June 12, 2001, specifies to submit certain inspection results to the manufacturer, this AD does not include such a requirement.

*Alternative Methods of Compliance*

(l)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously per AD 99-13-07, amendment 39-11201, and AD 2002-10-03, amendment 39-12749, are approved as alternative methods of compliance for the corresponding requirements of this AD.

*Incorporation by Reference*

(m) Unless otherwise specified in this AD, the actions shall be done in accordance with the service bulletins listed in Table 1 of this AD.

TABLE 1.—SERVICE BULLETINS INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Boeing Alert Service Bulletin MD80-32A308 .....	Revision 04 .....	June 12, 2001.
Boeing Service Bulletin MD80-32-309 .....	Revision 01 .....	April 25, 2001.
McDonnell Douglas Alert Service Bulletin MD80-32A308 .....	Original .....	March 5, 1998.
McDonnell Douglas Alert Service Bulletin MD80-32A308 .....	Revision 01 .....	May 12, 1998.

(1) The incorporation by reference of Boeing Alert Service Bulletin MD80-32A308, Revision 04, dated June 12, 2001, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin MD80-32-309, Revision 01, dated April 25, 2001, was approved previously by the Director of the Federal Register as of June 20, 2002 (67 FR 34823, May 16, 2002).

(3) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD80-32A308, dated March 5, 1998; and McDonnell Douglas Alert Service Bulletin MD80-32A308, Revision 01, dated May 12, 1998; was approved previously by the Director of the Federal Register as of July 28, 1999 (64 FR 33392, June 23, 1999).

(4) To get copies of this service information, go to Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; to the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to [http://www.archives.gov/federal\\_register/](http://www.archives.gov/federal_register/)

[code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.federalregister.gov/code_of_federal_regulations/ibr_locations.html).

*Effective Date*

(n) This amendment becomes effective on June 2, 2005.

Issued in Renton, Washington, on April 20, 2005.

**Ali Bahrami,**

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

[FR Doc. 05-8404 Filed 4-27-05; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Part 648**

[Docket No. 041229366-5088-02; I.D. 122304D]

**RIN 0648-AQ25**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Amendment 2**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing approved measures contained in Amendment 2 to the Monkfish Fishery Management Plan (FMP). Amendment 2 was developed to address essential fish habitat (EFH) and bycatch issues, and to revise the FMP to address several issues raised during the public scoping process. This rule implements the

following measures: a new limited access permit for qualified vessels fishing south of 38°20' N. lat.; an offshore monkfish fishery in the Southern Fishery Management Area (SFMA); a maximum roller-gear disc diameter of 6 inches (15.2 cm) for trawl gear vessels fishing in the SFMA; closure of two deep-sea canyon areas to all gears when fishing under the monkfish days-at-sea (DAS) program; establishment of a research DAS set-aside program and a DAS exemption program; a North Atlantic Fisheries Organization (NAFO) Regulated Area Exemption Program; adjustments to the monkfish incidental catch limits; a decrease in the monkfish minimum size in the SFMA; removal of the 20-day block requirement; and new additions to the list of actions that can be taken under the framework adjustment process contained in the FMP. The intent of this action is to provide efficient management of the monkfish fishery and to meet conservation objectives. Also, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for these collections.

**DATES:** Effective May 1, 2005.

**ADDRESSES:** Copies of Amendment 2, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Final Supplemental Environmental Impact Statement (FSEIS) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (NEFMC), 50 Water Street, Newburyport, MA 01950. The document is also available online at <http://www.nefmc.org>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the classification section of this rule. Copies of the Record of Decision (ROD) and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930, and on the Northeast Regional Office's website at <http://www.nero.noaa.gov>.

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

**FOR FURTHER INFORMATION CONTACT:** Allison R. Ferreira, Fishery Policy Analyst, (978) 281-9103; fax (978) 281-9135; e-mail [allison.ferreira@noaa.gov](mailto:allison.ferreira@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

This final rule implements measures contained in Amendment 2 to the FMP, which was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on March 30, 2005. A proposed rule for this action was published on January 14, 2005 (70 FR 2586), with public comments accepted through February 14, 2005. The public comment period was reopened for 10 days on February 24, 2005 (70 FR 9029), because the qualification period for the proposed modification to the monkfish limited entry program was incorrectly described in the preamble to the proposed rule. The details on the development of Amendment 2 were contained in the preamble of the proposed rule and are not repeated here. In the proposed rule, NMFS requested public comment on all proposed measures, but specifically asked for comment on the measure to provide owners of limited access monkfish vessels with a one-time opportunity to reset their vessel's monkfish permit baseline characteristics to be the characteristics of the vessel first issued a Federal limited access permit, rather than the characteristics of the vessel at the time it was issued a monkfish limited access permit under the initial FMP. After considering public comments on this measure and the other measures contained in Amendment 2, NMFS, on behalf of the Secretary, has disapproved the monkfish baseline modification measure. Furthermore, NMFS is rejecting the Councils' determination and analysis with respect to the bycatch reporting methodology contained in Amendment 2, and is sending that portion of Amendment 2 back to the Councils for further consideration, development, and analysis in light of concerns raised in a recent Federal court decision in *Oceana v. Evans* (Civil Action No. 04-0811 (D.D.C. March 9, 2005)), which considered and rejected a similar provision in Amendment 13 to the Northeast (NE) Multispecies FMP (Amendment 13).

A process for providing a monkfish limited access vessel owner with a one-time opportunity to reset their vessel's monkfish permit baseline characteristics to be the characteristics of the vessel first issued a Federal limited access permit was proposed in Amendment 2. This proposed management measure has been disapproved because it does not comply with National Standard 7 of the Magnuson-Stevens Fishery Conservation and Management (Magnuson-Stevens Act). National

Standard 7 of the Magnuson-Stevens Act states, "Conservation and management shall, where practicable, minimize costs and avoid unnecessary duplication." Further, the regulatory guidelines for implementing National Standard 7 found at 50 CFR 600.340(d) state, "The supporting analysis for FMPs should demonstrate that the benefits of fishery regulations are real and substantial relative to the added research, administrative, and enforcement, as well as costs to the industry of compliance." This proposed measure would only have addressed the multiple baseline issue with respect to the monkfish fishery, creating the need to address separately similar measures in other FMPs in order to fully address the larger issue of multiple baselines across all fisheries. Handling the multiple baseline issue in such a piecemeal manner would require the Councils and NMFS to develop and implement duplicate measures under each FMP, resulting in unnecessary administrative burden on the Government and on limited access permit holders. Upon implementation of such measures in each FMP, owners of vessels with multiple limited access permits would be required to modify their vessel's baseline for that particular fishery, potentially requiring a vessel owner to change a single vessel's baseline multiple times. Further, the potential benefits associated with addressing the multiple baseline issue in each individual FMP would not be fully realized until measures are implemented in all FMPs having limited access permits. Given the uncertainty of whether any fishing vessels would actually exercise their right to reset their vessel baseline under the baseline modification program proposed in Amendment 2, NMFS has determined that, at this time, the speculative benefits of this measure are not "real and substantial" relative to the added administrative and enforcement costs, as well as the costs to the industry of compliance. It would be more efficient, comprehensive, and less confusing to the public for the Councils to address the vessel baseline issue across all FMPs in an omnibus amendment.

##### Approved Measures

NMFS has approved 10 measures proposed in Amendment 2. A description of the new management measures resulting from the partial approval of Amendment 2 and a summary of additional regulatory changes being made in this final rule are provided below.

### 1. Modification of the Limited Access Permit Qualification Criteria

Amendment 2 provides owners of vessels that do not possess a monkfish limited access permit with the opportunity to qualify for a new monkfish limited access permit through a modified limited entry program. In order to qualify for a limited access permit under this modified limited entry program, a vessel must demonstrate that it landed the qualifying amount of monkfish in the area south of 38°00' N. lat. (i.e., at a port located south of 38°00' N. lat.) during the qualification period of March 15 through June 15, during the years 1995 through 1998. Two permits will be available, depending on the amount of monkfish the vessel landed during the qualification period (the same landings levels that were required for the original monkfish limited access permits). To qualify for a Category G permit, a vessel must demonstrate monkfish landings of at least 50,000 lb (22,680 kg) tail weight during the qualification period. To qualify for a Category H permit, a vessel must demonstrate monkfish landings of at least 7,500 lb (3,402 kg) tail weight during the qualification period. Vessels qualifying for a Category G or H permit will be restricted to fishing on a monkfish DAS south of 38°20' N. lat. (the initial line was established at 38°00' N. lat. but revised to 38°20' N. lat. in response to sea turtle protection measures).

This modified limited entry program is being implemented to provide a renewed opportunity for vessels operating in the southern range of the monkfish fishery to qualify for a limited access monkfish permit since some vessel owners claim they were not adequately notified of the monkfish control date established on February 27, 1995, because they did not possess Federal NE permits. In addition, the southern boundary of the monkfish fishery management unit was initially proposed as the VA/NC border, rather than the NC/SC border, leading some to believe they would not be affected by the FMP.

### 2. Offshore Fishery Program in the SFMA

Amendment 2 establishes an offshore monkfish fishery program that will allow vessels to elect to fish under a monkfish possession limit of 1,600 lb (726 kg) (tail weight) per monkfish DAS when fishing in the Offshore Fishery Program Area under specific conditions, regardless of the possession limit that would otherwise be applicable to that vessel. For a vessel electing to fish in

this program, monkfish DAS will be prorated based on a possession limit ratio (the standard permit category possession limit applicable to non-program vessels fishing in the SFMA, divided by 1,600 lb (726 kg) (the possession limit per DAS specified for vessels fishing in the program)), multiplied by the monkfish DAS available to the vessel when fishing in the SFMA.

Vessels electing to fish in this program will be required to fish under the program rules for the entire fishing year and will receive a separate monkfish permit category (Category F). A vessel electing to fish in this program will be allowed to fish its monkfish DAS only within the Offshore Fishery Program Area from October through April. In addition, enrolled vessels will be required to have on board a Vessel Monitoring System (VMS) that is operational during the entire October through April season, and will be subject to the gear requirements applicable to monkfish limited access permit Category A and B vessels.

The Offshore Fishery Program is being implemented to help restore the offshore monkfish fishery that was essentially eliminated by the disapproval of the "running clock" in the original FMP. The running clock provision proposed in the original FMP would have provided vessels with the ability to account for any possession limit overages, provided that the vessel let its monkfish DAS clock run upon returning to port to account for these overages. Without the running clock provision, vessels have been discouraged from fishing in offshore areas under the current restrictive possession limits. Any vessel not electing to fish under this program will still be allowed to fish in the Offshore Fishery Program Area under the rules and regulations applicable to non-program vessels. This program is intended to provide flexibility to the fishing industry without impacting the mortality objectives of the FMP.

### 3. SFMA Roller Gear Restriction

The roller gear on all trawl vessels fishing under a monkfish DAS in the SFMA is restricted to a maximum disc diameter of 6 inches (15.2 cm). The purpose of this new management measure is to minimize, to the extent practicable, the adverse impact of monkfish trawl gear on EFH. This measure is specific to the SFMA since it will help ensure that trawl vessels, which are known to be able to target monkfish more successfully with smaller roller gear in the SFMA than in the Northern Fishery Management Area

(NFMA), do not fish in areas of more complex bottom characteristics, including the offshore canyon areas.

### 4. Closure of Lydonia and Oceanographer Canyons

Vessels fishing on a monkfish DAS are prohibited from fishing in the Oceanographer and Lydonia Canyon closure areas, as defined in Amendment 2, regardless of gear used. The purpose of these closures is to minimize, to the extent practicable, the adverse impact of monkfish fishing on EFH, especially due to the potential impacts associated with the anticipated expansion of the directed offshore monkfish fishery under the Offshore Southern Monkfish Program being implemented in this final rule.

### 5. Cooperative Research Initiative Programs

Amendment 2 establishes two programs aimed at encouraging vessels to engage in cooperative monkfish research activities, including, but not limited to: Research to minimize bycatch and interactions of the monkfish fishery with sea turtles and other protected species; research to minimize the impact of the monkfish fishery on EFH; research or experimental fisheries for the purpose of establishing a monkfish trawl exempted fishery (under the NE Multispecies FMP) in the NFMA; research on the biology or population structure and dynamics of monkfish; cooperative surveys; and gear efficiency. The purpose of these two programs is to expand incentives for fishermen to participate in a range of monkfish research and survey activities by reducing the costs associated with conducting the research, and by streamlining the exempted fishing permit (EFP) process.

Under the DAS set-aside program, a pool of 500 monkfish DAS will be set aside to be distributed to vessels for the purpose of participating in cooperative monkfish research projects. These DAS will be obtained by removing 500 DAS from the total monkfish DAS available to the monkfish fleet prior to distribution to individual vessels. This will result in less than one DAS being deducted from each individual vessel allocation annually. For fishing year (FY) 2005, this set-aside will reduce individual vessel DAS allocations by 0.7 DAS. NMFS will publish a Request for Proposals (RFP) and vessels will be required to submit competitive bids to participate in specific research or survey projects. NMFS will then convene a review panel composed of Council members from the Monkfish Oversight

Committee, the Research Steering Committee, and other technical experts to review the proposals. NMFS will consider the recommendations of each panel member and award the contracts to successful applicants, including a distribution of DAS from the set-aside pool.

The Regional Administrator (RA) will reallocate any unused research DAS as exempted DAS and provide notice of the reallocation in the **Federal Register**. Thus, any of the 500 DAS not distributed through the RFP process will be available to vessels through a DAS exemption program on a first-come-first-served basis. Under the DAS exemption program, vessels applying for an EFP will indicate the number of monkfish DAS they will require to complete their research project. NMFS will then review the EFP application and, if approved, issue the permit exempting the vessel from monkfish DAS usage requirements. The total number of monkfish DAS that could be used in the two programs (distributed under the RFP process or used in the exemption program) could not exceed the originally established 500 DAS annual set-aside pool. For any DAS exemption request that exceeds the 500 DAS set-aside analyzed in the FSEIS for Amendment 2, the applicant will be required to prepare an analysis of the impacts of the additional DAS effort that fully complies with the requirements of the National Environmental Policy Act. For FY 2005, all of the 500 DAS set aside for research will be reallocated as exempted DAS since an RFP cannot be published, projects reviewed and approved, and research DAS allocated in sufficient time for the research DAS to be utilized during FY 2005.

#### 6. NAFO Regulated Area Exemption Program

This final rule implements an exemption from certain FMP regulations for vessels that are fishing for monkfish under a High Seas Permit in the NAFO Regulated Area and transiting the Exclusive Economic Zone (EEZ) with monkfish on board or landing monkfish in U.S. ports. Similar to the NAFO waters exemption in the NE Multispecies FMP, monkfish vessels enrolled in the NAFO Regulated Area Exemption Program are exempt from the monkfish regulations pertaining to permit requirements, minimum mesh size, effort control (DAS), and possession limits. Further, monkfish caught from the NAFO Regulated Area will not count against the monkfish total allowable catch, provided: The vessel has on board a letter of authorization issued by the Regional Administrator;

except for transiting purposes, the vessel fishes exclusively in the NAFO Regulated Area and does not harvest fish in, or possess fish harvested from, the EEZ; when transiting the EEZ, all gear is properly stowed and not available for immediate use; and the vessel complies with all High Seas Fishing Compliance Permit and NAFO conservation and enforcement measures while fishing in the NAFO Regulated Area. This exemption program provides additional flexibility to monkfish vessels without compromising the mortality objectives of the FMP.

#### 7. Changes to Incidental Catch Provisions

Three adjustments to the monkfish incidental catch limits are implemented through this final rule. The purpose of these adjustments to the incidental catch limits is to minimize regulatory discards without affecting the overall stock rebuilding program. The first adjustment increases the current 50 lb (23 kg) per trip possession limit to be 50 lb (23 kg) per day, or partial day, up to a maximum of 150 lb (68 kg) per trip, for vessels not fishing under a monkfish DAS, NE multispecies, or scallop DAS, and fishing with handgear or small mesh (see below). This possession limit also applies to NE multispecies limited access vessels that hold a Small Vessel Exemption permit when not fishing under a DAS program. Small mesh is defined as mesh smaller than the NE multispecies minimum mesh size requirements applicable to vessels fishing in the GOM and GB Regulated Mesh Areas (RMAs), and the Southern New England (SNE) RMA east of the boundary for the Mid-Atlantic (MA) Exemption Area. For vessels fishing in the SNE and MA RMAs west of the MA Exemption Area boundary, small mesh is defined as mesh smaller than the minimum mesh size applicable to limited access summer flounder vessels.

The second adjustment implements the same incidental monkfish catch limit of 50 lb (23 kg) per day, or partial day, up to a maximum of 150 lb (68 kg) per trip, for vessels fishing with surfclam or ocean quahog hydraulic dredges, and sea scallop vessels (General Category or limited access) not fishing under a scallop DAS with dredge gear. These vessels were previously prohibited from retaining monkfish. For the purposes of these new possession limits, a day is counted starting with the time the vessel leaves port (as recorded in its Vessel Trip Report), or, if the vessel has an operational VMS, when the vessel crosses the VMS demarcation line. This incidental catch limit has been modified from the proposed rule to

include both General Category scallop vessels and limited access scallop vessels not fishing under a scallop DAS since limited access scallop vessels are authorized to fish under the same rules applicable to General Category vessels when not fishing under a scallop DAS, as specified under § 648.52(a). The Amendment 2 document was not clear with respect to whether or not this incidental catch provision should include limited access scallop vessels not fishing under a scallop DAS. However, because limited access scallop vessels must abide by the same provisions as General Category scallop vessels when not fishing under a scallop DAS, NMFS has determined that it was the Councils' intent to include these vessels under this incidental catch limit.

The third monkfish incidental catch limit adjustment is applicable to vessels fishing with large mesh in the SNE or MA RMAs west of the boundary for the NE Multispecies MA Exemption Area. In this area, large mesh is defined as mesh equal to or greater than the minimum mesh size applicable to limited access summer flounder vessels. This adjustment increases the possession limit to 5 percent of the total weight of fish on board, to a maximum of 450 lb (204 kg), based on tail weight.

#### 8. Decrease in Minimum Fish Size

Amendment 2 reduces the minimum fish size for monkfish in the SFMA to 11 inches (27.9 cm) tail length, 17 inches (43.2 cm) total length, from the current minimum size limit of 14 inches (35.6 cm) tail length, 21 inches (53.3 cm) total length. This change makes the minimum size for the SFMA consistent with the minimum fish size for the NFMA, simplifying the FMP rules and improving enforceability. Minimum fish size regulations have been widely used in FMPs on the basis that they discourage the targeting of small fish, and increase yield-per-recruit if successfully linked to gear with appropriate size-selectivity. Monkfish limited access trawl vessels that are fishing under a combined monkfish/multispecies DAS are authorized to use the minimum regulated mesh size authorized under the NE Multispecies FMP. As a result, these vessels already catch monkfish smaller than the current minimum fish size of 14 inches (35.6 cm) tail length. Until there is sufficient information linking trawl mesh size to the size of monkfish retained, the Councils determined that it is important to minimize the regulatory discards associated with vessels targeting monkfish using minimum regulated groundfish mesh. A reduction in the minimum fish size for the SFMA, while

keeping the minimum mesh size requirements constant, will have the effect of converting some monkfish discards to landings and reducing monkfish bycatch (regulatory discards), without changing the yield-per-recruit or promoting the targeting of small fish. In addition, a uniform minimum size limit for both management areas reduces FMP complexity, making this management measure more enforceable and less confusing to the fishing industry. Further, allowing vessels to land monkfish that would otherwise have been discarded, due to a larger minimum size limit, will improve the catch data used in the stock assessment and management process.

#### *9. Removal of 20-day Block Requirement*

Amendment 2 eliminates the 20-day block requirement for monkfish limited access Category A and B vessels. NMFS is removing the 20-day block requirement since it imposes an enforcement burden and increases the regulatory burden on monkfish limited access vessels with no apparent biological or economic benefit. This change does not affect the requirement for monkfish limited access vessels that also hold a NE multispecies limited access permit (Category C and D vessels) since these vessels must abide by the NE multispecies 20-day block requirement when fishing under a combined monkfish/multispecies DAS.

#### *10. Modification of Framework Adjustment Procedures*

Amendment 2 includes three additions to the list of actions that can be taken under the existing framework adjustment procedure, which are as follows: Transferable monkfish DAS programs; measures to minimize the impact of the fishery on endangered or protected species; and measures to implement bycatch reduction devices. Including these additional measures to the list of frameworkable items could reduce the time required to implement such regulations, which otherwise would have to be done through an FMP amendment process.

#### *11. Regulatory Changes*

This final rule implements several editorial revisions to the existing text in 50 CFR 648, subpart F, that are not proposed in Amendment 2. These revisions remove obsolete language (references to regulations in effect during previous fishing years) and improve the organization and clarity of the regulations.

In addition to the editorial revisions referenced above, this final rule corrects

an error in the incidental catch limit regulations for scallop vessels fishing under a scallop DAS found at 50 CFR 648.94(c)(2). The original FMP and the preamble to the final rule implementing the FMP (64 FR 54732, October 7, 1999) stated that all vessels issued an incidental monkfish permit that are fishing under a scallop DAS, including both dredge vessels and vessels fishing under the trawl net exemption, are subject to an incidental catch limit of 300 lb (136 kg) tail weight per DAS (see Section 4.6.3.2 of the FMP). However, the regulatory text in the final rule implementing the FMP inadvertently referenced only scallop dredge vessels fishing under a scallop DAS. The final rule will correct the regulations at § 648.94(c)(2) to apply to all vessels fishing under a scallop DAS, consistent with the intent of the original FMP.

This final rule corrects the monkfish minimum trawl mesh size for the SNE Monkfish and Skate Trawl Exemption Area, specified at § 648.80(b)(5)(i)(B), to be consistent with the minimum trawl mesh size for vessels fishing under only a monkfish DAS, specified at § 648.91(c)(1)(i). The necessary minimum mesh size change to this exemption program under the NE Multispecies FMP was inadvertently omitted in drafting the regulatory text for the final rule implementing the original FMP.

The final rule also corrects an error in the possession limit regulations for limited access Category C and D vessels fishing on a multispecies DAS in the SFMA with gear other than trawl gear, specified at § 648.94(b)(3)(ii), to reference the fact that the 50-lb (23 kg) tail weight possession limit is per multispecies DAS. This error occurred in the regulatory text of the final rule implementing the FMP, but was correctly described in the preamble to that rule.

#### **Comments and Responses**

A total of 15 individual comment letters were received on the proposed rule and on the Amendment. Eleven comments were received specific to the proposed rule, two comments addressed the Amendment, and two comments did not distinguish between the proposed rule and the Amendment. This section summarizes the principle comments contained in the individual comment letters that pertained to Amendment 2 and the proposed rule, and NMFS's response to those comments. Any comments received that were not specific to the management measures contained in the Amendment 2 proposed rule, or in the amendment

document, are not responded to in this final rule.

Ten commentors expressed either general or specific support for the management measures contained in Amendment 2, although two of these commentors expressed opposition or lack of support for particular management measures. Five comments were received in apparent opposition to the Amendment. The opposing comments received on Amendment 2 and its proposed rule were specific to the following issues: The research DAS set-aside program; essential fish habitat (EFH) measures; the modification of monkfish vessel baselines; the reduction in the minimum fish size for the SFMA; bycatch minimization; and bycatch reporting methodology.

*Comment 1:* One commentor opposed the proposed set-aside of 500 DAS for monkfish research, questioning the validity of such research activities.

*Response:* The research set-aside program contained in Amendment 2 will encourage much needed research on the monkfish resource by providing an incentive for vessel owners to participate in monkfish research activities while not utilizing their valuable DAS. Information collected through these research activities will enable the Councils and NMFS to better understand the monkfish resource, enabling more effective management of the monkfish fishery.

*Comment 2:* Three commentors supported the Lydonia and Oceanographer canyon closure areas, while one commentor questioned the legal authority and scientific basis for these closures under the EFH provisions of the Magnuson-Stevens Act. Specifically, this commentor cites a July 28, 2004, letter from NOAA General Counsel to the NEFMC regarding the legal basis for protecting deep-water corals in Amendment 2. This letter advised that if deep-water corals are designated as EFH for monkfish, then protection of such corals in Amendment 2 is legal and appropriate. The fishing industry representatives claim that because Amendment 2 states that corals are not currently included in the EFH descriptions for any species in the NE region, the legal basis for the closures is tenuous at best. Instead, these individuals urged NMFS to work with the Councils to develop a comprehensive approach toward the protection of deep-water coral in the NEFMC's upcoming Omnibus Habitat Amendment. The three groups which expressed support for the canyon closures also recommended that these closures be revisited and/or expanded upon in a future management action

such as the Omnibus Habitat Amendment.

*Response:* The EFH final rule states that FMPs must minimize the adverse effects of fishing on EFH to the extent practicable. Although monkfish inhabit deep water, their EFH is not considered to be vulnerable to bottom-tending mobile gear (bottom trawls and dredges) and bottom gillnets because juvenile and adult monkfish are distributed over a wide geographic and depth range, and inhabit a variety of bottom substrates. As a result, no action is required to minimize the adverse impacts of the monkfish fishery or other fisheries on monkfish EFH. However, it has been determined that the monkfish fishery adversely affects the EFH for other federally managed species. Overall, there are 23 federally managed species with at least one life stage having EFH that has been determined to be more than minimally vulnerable to bottom trawl gear. As a result, management action is required to minimize, to the extent practicable, the adverse impacts of the monkfish fishery on the EFH of other species (see 50 CFR 600.815(a)(2)(ii)).

The Councils proposed the closure of Lydonia and Oceanographer canyons as a precautionary measure to prevent any potential direct or indirect impacts to the EFH of other species that may result as the offshore monkfish fishery expands under the Offshore Fishery Program in the SFMA that is being implemented in this final rule. Thus, these closure areas are not being implemented solely to protect deep-water corals. In developing these alternatives, the Councils recognized that EFH for some federally managed species extends beyond the continental shelf, and includes some of the offshore canyons. The direct benefits of these closure areas were assessed in the FSEIS for Amendment 2 in terms of the degree to which the closure areas contain EFH for any species in depths greater than 200 meters that is classified as vulnerable. Twenty-three federally managed species have been observed or collected in surveys within the two canyon closure areas, with 10 of these species having EFH defined as hard substrates in depths greater than 200 meters. Furthermore, the EFH designations for juvenile and/or adult life stages for 6 of these 10 species (redfish, tilefish, and 4 species of skates) overlap with the two canyon closure areas. Since some type of hard substrate is included in the EFH description for all six species, EFH for all six of these species has been determined to be moderately to highly vulnerable to the effects of bottom trawls and minimally

vulnerable to bottom gillnets. Any reduction in the quantity or quality of EFH for these six species within the two canyon closure areas would constitute a direct adverse impact. Thus, the direct adverse impacts associated with the expansion of the offshore monkfish fishery in the SFMA will be minimized through the implementation of the Lydonia and Oceanographer canyon closure areas.

Although corals are not explicitly included in the EFH descriptions for any species in the NE region, deep-water corals are known to grow on hard substrates, which are included in the EFH descriptions for many of the federally managed species that occur within the proposed closure areas, and are considered to be potentially important features of EFH for such species. Deep-water corals are considered to be especially vulnerable to damage by fishing gear due to their often complex branching form of growth, and because many species are extremely slow growing. Additionally, some coral species are thought to function similar to other epibenthic fauna in that they provide relief and shelter to juvenile finfish. For example, the EFH for juvenile redfish is has been determined to be highly vulnerable to the effects of bottom trawling largely due to this species use of bottom structure (including corals) for shelter. In addition, several other species found in the canyon closure areas utilize deep-water gravel and other hard bottom habitat that support the growth of corals and other species of attached epifauna. Damage or loss of these organisms caused by monkfish trawl or gillnet gear would constitute an indirect adverse impact to the benthic habitats. Thus, the indirect adverse impacts associated with the expansion of the offshore monkfish fishery in the SFMA will be minimized through the implementation of the Lydonia and Oceanographer canyon closure areas. Accordingly, the implementation of these closures in the EFH context is not justified on the grounds that it is necessary to protect deep-water corals per se, but rather on the grounds that it is necessary to protect the type of habitat occurring in these areas, which incidentally includes deep-water corals among other organisms.

*Comment 3:* One commentor questioned the scientific and legal authority of the canyon closure areas under the EFH provisions of the Magnuson-Stevens Act and questioned the scientific basis for the protection of deep-water corals under the bycatch provisions of the Magnuson-Stevens Act. This commentor stated that

Amendment 2 provides no scientific evidence that the monkfish fishery is harvesting coral as bycatch.

*Response:* National Standard 9 of the Magnuson-Stevens Act requires that management plans minimize bycatch to the extent practicable. NMFS considers bycatch to include finfish, shellfish, invertebrate species, and all other forms of marine animal and plant life. The extent to which deep-water corals are a bycatch in the monkfish fishery is unknown. In addition, the degree of spatial overlap between monkfish fishing effort and known locations of deep-water coral is minimal based upon available data. However, due to the potential expansion of the offshore monkfish fishery resulting from the implementation of the Offshore Fishery Program in the SFMA, these canyon closure areas are considered to be a necessary precautionary measure to limit the potential interaction between monkfish trawl and gillnet gear and the 18 species of coral known to inhabit these two canyons. Thus, in addition to serving as a measure to minimize the direct and indirect adverse impacts of the monkfish fishery on the EFH of other species, these closure areas will also serve to minimize the potential bycatch of deep-water corals in the monkfish fishery.

*Comment 4:* One commentor stated that Amendment 2 fails to minimize fishing impacts to gravel habitats and juvenile cod EFH.

*Response:* The monkfish fishery can be separated into two components: The fishery in the NFMA and the fishery in the SFMA. In general, unless fishing in the Gulf of Maine (GOM) and Georges Bank (GB) monkfish gillnet fishery exemption area, vessels fishing for monkfish in the NFMA can only fish for monkfish while utilizing either a NE multispecies DAS or a scallop DAS, and must comply with all requirements of these FMPs. Because of this, monkfish fishing effort and activities are effectively controlled by management measures implemented under the NE Multispecies and Atlantic Sea Scallop FMPs. Recent amendments to these FMPs (Amendment 13 to the NE Multispecies FMP and Amendment 10 to the Atlantic Sea Scallop FMP) considered and analyzed a wide range of measures to minimize, to the extent practicable, the effects of fishing on EFH. These amendments also implemented several new management measures that had either the direct or indirect effect of reducing fishing impacts on EFH. The types of management measures considered and/or implemented in these amendments include area closures, fishing effort

reductions, gear changes and limitations, and incentives for fishermen to use gear having less of an impact on EFH. Both amendments concluded that the measures considered and implemented minimized, to the extent practicable, the adverse effects of fishing activities on EFH. Amendment 2 did not address the effects of fishing activities in the NFMA because these activities were fully addressed in Amendment 13 to the NE Multispecies FMP and Amendment 10 to the Atlantic Sea Scallop FMP.

As opposed to the NFMA, vessels fishing for monkfish in the SFMA may operate outside the requirements and controls of the NE Multispecies and the Atlantic Sea Scallop FMPs. Therefore, Amendment 2 considered a range of management measures to minimize, to the extent practicable, the effects of monkfish fishing on EFH in the SFMA. Amendment 2 implements two management measures with the specific intent of minimizing the effects of monkfish fishing on EFH: The prohibition on otter trawl roller gear greater than 6 inches (15.2 cm) in diameter, and the closures of Lydonia and Oceanographer canyons. The specifics of the canyon closures are addressed in the response to the previous comment, and are not repeated here. The roller gear restriction is expressly intended to prevent monkfish trawl vessels from fishing in areas containing vulnerable complex habitat, such as gravel habitat. Therefore, although Amendment 2 does not contain measures to close identified areas of gravel habitat and juvenile cod EFH, the roller gear restriction being implemented in this amendment will have the effect of limiting trawl fishing in all areas where complex habitats occur. The NEFMC's upcoming Omnibus Habitat Amendment will continue to take a comprehensive approach toward protection of vulnerable habitat, such as gravel habitat.

*Comment 5:* Two individuals provided specific comments on the proposal to allow vessel owners a one-time opportunity to modify their monkfish vessel's baseline. One commentor supports the measure, while the other feels that the baseline issue would be better handled across all FMPs at one time, versus in each individual FMP. The individual opposing these measures commented that allowing vessel owners to change their vessel's baseline specifications on a piece-meal basis only adds confusion to those with more than one limited access permit, does not resolve the issue of multiple baselines in other fisheries, and could

have tremendous ramifications on the fishing capacity of the fleet. Further, this individual recommended that the NEFMC's Capacity Committee work with the fishing industry, and staff from the Councils and NMFS, to develop recommendations on how to address the issue of multiple baselines.

*Response:* In the proposed rule for Amendment 2, NMFS highlighted the monkfish vessel baseline modification measure for public comment due to the concern that this measure would not address the larger issue of multiple vessel baselines across all limited access fisheries. As discussed in the preamble to this final rule, NMFS is disapproving this measure on the grounds that it does not comply with National Standard 7 of the Magnuson-Stevens Act.

*Comment 6:* Two commentors expressed concern with the measure to reduce the minimum fish size in the SFMA. Both individuals feel that this measure is a step backwards in management that would impact the sustainability of monkfish stocks, and stated that gear modifications such as an increase in the minimum mesh size should be used to prevent the harvest of immature fish, and prevent bycatch and discards. One of the commentors added that the smaller minimum fish size would also have an effect on the market price since the influx of smaller, cheaper fish would drive down the price of monkfish.

*Response:* Minimum fish size regulations have been widely used in FMPs on the basis that they discourage the targeting of small fish, and increase yield-per-recruit if successfully linked to gear with appropriate size-selectivity. Monkfish limited access trawl vessels that are fishing under a combined monkfish/multispecies DAS are authorized to use the minimum regulated mesh size authorized under the NE Multispecies FMP. As a result, these vessels already catch monkfish smaller than the current minimum fish size of 14 inches (35.6 cm) tail length. Until there is sufficient information linking trawl mesh size to the size of monkfish retained, the Councils determined that it is important to minimize the regulatory discards associated with vessels targeting monkfish using minimum regulated groundfish mesh. A reduction in the minimum fish size for the SFMA, while keeping the minimum mesh size requirements constant, will have the effect of converting some monkfish discards to landings and reducing monkfish bycatch (regulatory discards), without changing the yield-per-recruit or promoting the targeting of small fish since vessels likely catch the smaller

fish under current measures. In addition, a uniform minimum size limit for both management areas reduces FMP complexity, making this management measure more enforceable and less confusing to the fishing industry. Further, allowing vessels to land monkfish that would otherwise have been discarded, due to a larger minimum size limit, will improve the catch data used in the stock assessment and management process.

The response to the portion of the comment concerning the effect of a smaller minimum fish size on market price is contained in the FRFA section of this rule.

*Comment 7:* One commentor stated that Amendment 2 fails to consider any alternatives to improve bycatch reporting methodology, including alternatives to increase mandatory observer coverage.

*Response:* Although there is a bycatch reporting methodology in place for the Monkfish FMP, NMFS is rejecting the Councils' determination and analysis with respect to the bycatch reporting methodology contained in Amendment 2, and is sending that portion of Amendment 2 back to the Councils for further consideration, development, and analysis in light of concerns raised in a recent Federal court decision in *Oceana v. Evans*. In *Oceana v. Evans*, the Court concluded that the bycatch reporting methodology provisions contained of Amendment 13 did not satisfy the requirements of the Magnuson-Stevens Act because they fail to fully evaluate reporting methodologies to assess bycatch, they do not mandate a standardized reporting methodology, including minimum levels of observer coverage, and they fail to respond to potentially important scientific evidence involving accuracy versus precision in determining appropriate levels of observer coverage. Because the monkfish fishery largely overlaps with the NE multispecies fishery, the Amendment 2 bycatch reporting methodology heavily relies on, and is set forth in a manner similar, to the bycatch reporting methodology in the NE Multispecies FMP. Thus, in light of the concerns raised in the *Oceana* decision about bycatch reporting methodology contained in Amendment 13 to the Multispecies FMP, NMFS has concluded that Amendment 2 does not adequately comply with the required provision in the Magnuson-Stevens Act to establish a bycatch reporting methodology.

Rejecting the bycatch reporting methodology contained in Amendment 2 does not vitiate the partial approval of other measures. As stated by the Court

in *Oceana v. Evans* in rejecting an analogous section in Amendment 13, the bycatch reporting methodology “is severable from the balance of the Amendment,” and, “no purpose would be served by vacating other parts of the FMP, and such an approach would be unnecessarily disruptive.” The partially approved measures in Amendment 2 implement improvements to the protection of EFH, minimize bycatch, and provide additional benefits to the fishing industry. To prevent their implementation, while awaiting a revised bycatch reporting methodology, would unnecessarily deny the environment and monkfish fishery the benefits of Amendment 2. Moreover, the Monkfish FMP does include a bycatch reporting methodology, that will be in place during the period when the Councils further consider the methodology in light of concerns raised in the decision in *Oceana v. Evans*.

*Comment 8:* The same individual that commented on bycatch reporting methodology also stated that Amendment 2 fails to provide adequate measures to minimize bycatch and the unavoidable mortality of bycatch. This includes the bycatch of undersized monkfish and non-target species, including marine mammals and sea turtles.

*Response:* National Standard 9 requires bycatch and bycatch mortality to be minimized to the extent practicable. The National Standard Guidelines place special emphasis on the minimization of bycatch, and provide specific guidance for evaluating conservation and management measures relative to National Standard 9 and other national standards, including specific guidance on assessing practicability. The National Standard Guidelines suggest that a practicability determination consider several factors including, but not limited to, population effects for bycatch species; ecological effects resulting from changes in the bycatch of that species; changes in the bycatch of other species; effects on marine mammals and birds; changes in fishing, processing, disposal, and marketing costs; changes in fishing practices and behavior; changes in research and other administrative costs; and changes in the social and cultural values of the fishing activities. However, this type of information is not available for the monkfish fishery. In fact, most of the bycatch information currently collected reported by NMFS is based on broad gear categories such as otter trawl, scallop dredge, gillnet greater than 10 inches (25.4 cm), and gillnet less than 10 inches (25.4 cm) (see Section 5.3.5 of the FSEIS). Furthermore, there is little

information with which to estimate the impacts of specific management measures on bycatch outside of a few gear studies, most of which have focused on bycatch in the NE multispecies fishery. As a result, the discussion of the biological impacts associated with the bycatch specific measures contained in Amendment 2 is qualitative, but clearly describes how the specific measures (reduction in minimum fish size and increase in incidental catch limits) will have the effect of converting to landings, fish that would otherwise be discarded.

NMFS supports the bycatch measures contained in Amendment 2, and has determined that these incremental measures, in addition to conservation and bycatch measures already in place in the Monkfish FMP and the NE Multispecies FMP, which largely overlap with the monkfish fishery, as well as FMPs for other fisheries that catch monkfish, are appropriate to reduce bycatch to the extent practicable given what is known about the interaction of the monkfish fishery with both target and non-target species, including marine mammals and sea turtles. Amendment 2 contains several new measures aimed at reducing bycatch in the monkfish fishery including a combined research DAS set-aside and DAS exemption program. The purpose of this program is to encourage the collection of much needed information on the monkfish fishery, including information on bycatch. The information obtained from such research activities can then be used to develop scientifically sound bycatch reduction measures for the monkfish fishery. Amendment 2 also contains measures that will have the effect of further reducing regulatory discards, as well as the potential bycatch of deep-water corals. These measures consist of modifications to incidental catch limits, a reduction in the minimum fish size for the SFMA, and the closure of two canyon areas where deep-water corals are known to occur. The report of the 34th Stock Assessment Workshop (SAW 34) noted that the most frequent reason for discarding monkfish in the trawl and scallop fisheries was because the fish were too small, either for the market or due to regulations. As discussed in the response to Comment 6, more information is needed concerning the relationship between mesh size and the size of monkfish retained in the fishery. Thus, a reduction in the minimum fish size will serve to convert the discard of some small monkfish to landings, addressing the bycatch of small monkfish to some extent, until much

needed information concerning the relationship between minimum fish size and minimum mesh size can be obtained and utilized in the management process.

With respect to the bycatch of marine mammals, which are not subject to the Magnuson-Stevens Act bycatch reduction mandates, and bycatch of sea turtles, sections 2.8 and 6.6.6.2 of the FSEIS describe the management measures currently in effect, or that are being developed to reduce the bycatch of marine mammals and sea turtles in the monkfish fishery. These management measures have been taken under the authority of the Marine Mammal Protection Act (MMPA) and/or the Endangered Species Act (ESA), and, therefore, take a more comprehensive approach to minimizing bycatch of marine mammals and sea turtles than can be accomplished under the Monkfish FMP alone. Given the limited information about bycatch of protected species, the measures in place under the ESA, the MMPA, and the Monkfish and NE Multispecies FMPs have been determined to reduce the potential bycatch of protected species to the extent practicable. For all of the reasons discussed above, NMFS has determined that the measures contained in Amendment 2 minimize bycatch and the unavoidable mortality of bycatch in the monkfish fishery to the extent practicable, in accordance with the guidelines for assessing practicability found at 50 CFR 600.350(d)(3), when viewed in combination with existing measures in the Monkfish and NE Multispecies FMPs, measures in the FMPs for other fisheries which catch monkfish, and specific ESA and MMPA regulations.

#### **Changes from the Proposed Rule**

NMFS has made one substantive change to the proposed rule resulting from the disapproval of one of the Councils' preferred alternatives. In addition to editorial changes, NMFS has also made some minor changes to the proposed rule that are technical or administrative in nature, and that clarify or otherwise enhance enforcement and administration of the fishery management program. The one substantive change is listed below, with the minor technical or administrative changes following in the order in which they appear in the regulations.

In § 648.4, the proposed revision to paragraph (a)(9)(i)(H) has been removed to reflect the disapproval of the vessel baseline modification measure contained in Amendment 2, as described in the preamble of this final rule.

In § 648.4(a)(9)(i)(A)(5), the annual declaration requirement for vessels participating in the Offshore Fishery Program in the SFMA, has been modified to provide owners of limited access monkfish vessels with the opportunity to change their vessel's monkfish permit category within 45 days of the effective date of the vessel's permit, regardless of the fishing year. The preamble and the regulatory text of the January 14, 2005, proposed rule (70 FR 2586) stated that vessel owners would be given only one opportunity to change their vessel's permit category to a Category F permit within 45 days of the effective date of Amendment 2. However, upon further consideration, and to be consistent with a similar provision for vessels holding limited access NE multispecies permits specified at § 648.4(a)(1)(i)(I)(2), NMFS has decided to modify the more restrictive permit category change requirement contained in the Amendment 2 proposed rule to provide vessel owners with the ability to change their vessel's limited access monkfish permit category within 45 days of the effective date of the vessel's permit in any fishing year, as long as the vessel has not fished under a monkfish DAS during that fishing year. This change will provide owners of limited access monkfish vessels with the same flexibility provided to owners of limited access NE multispecies vessels. The first sentence of this paragraph was also modified slightly to begin, "To fish in the Offshore Fishery Program, as described under § 648.95, vessels must apply..."

In § 648.4(a)(9)(i)(A)(7), the phrase "vessels fishing only south of 38°20' N. lat." contained in the introductory text has been modified to read "vessels restricted to fishing south of 38°20' N. lat." in order to be consistent with the introductory text of § 648.4(a)(9)(i)(A)(6).

In § 648.4, paragraph (a)(9)(i)(E)(4) has been added to address the issue of replacement vessels involved with qualifying for the new limited access Category G and H permits. This paragraph is similar to § 648.4(a)(9)(i)(E)(3) which addressed the same issue with respect to vessels qualifying for a limited access monkfish permit under the original FMP.

In § 648.4, paragraph (a)(9)(i)(N)(3) has been modified to reflect that a vessel's LOA will become invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the denial letter, and that the RA's decision on the appeal is the final decision of the Department of Commerce.

In § 648.9(c)(1), the cross-reference to § 648.58(h) has been corrected to read § 648.60(f). The change to this cross-reference was inadvertently omitted from the final rule implementing Amendment 10 to the Atlantic Sea Scallop FMP (69 FR 35194, June 23, 2004). In addition, a reference to paragraph § 648.95(e)(4) has been added to paragraph (c)(1) in order to cross-reference the VMS requirements for limited access monkfish Category F vessels, since these vessels are only required to have an operational VMS during a specified season.

In § 648.9, the proposed changes to paragraph (c)(2)(i) have been eliminated since the exception for monkfish limited access Category F vessels (i.e., the VMS requirement is limited to a specific season) has been cross-referenced under paragraph (c)(1) of this section.

In § 648.10, the paragraph (b)(v) has been removed since it duplicates the preceding paragraph (b)(iv). This paragraph should have been deleted in the final rule implementing Amendment 10 to the Atlantic Sea Scallop FMP.

In § 648.10(c)(1), the cross-reference to (c)(6) is corrected to read (b)(2)(iii). This cross-reference was incorrectly contained in the final rule implementing Amendment 13 to the NE Multispecies FMP (69 FR 22906, April 27, 2004).

In § 648.10(c)(3), the cross-reference to (b)(2)(iv) is corrected to read (b)(2)(iii). This cross-reference should have been updated in the final rule implementing Amendment 10 to the Atlantic Sea Scallop FMP.

In § 648.92(b)(1)(iv), the first sentence has been modified for clarity to begin, "A total of 500 DAS will be set aside and made available..."

In § 648.92, paragraph (c)(1)(ii)(B) has been clarified to reflect the role of the RA in the approval of projects for the DAS set-aside program.

In § 648.92, the last sentence of paragraph (c)(1)(v) has been modified to reflect that the RA will publish a notice in the **Federal Register** notifying the public of the reallocation of unused research DAS as exempted DAS. A sentence was also added to this paragraph clarifying that any unused research DAS may not be carried over in to the next fishing year.

In § 648.94, paragraph (b)(4) has been modified to include Category F, G, and H, vessels.

In § 648.94, paragraph (c)(2) has been modified to remove the reference to Category G and H vessels, since these vessels have been included in the possession limit for scallop vessels fishing under a scallop DAS specified at § 648.94(b)(2).

In § 648.94, paragraphs (c)(3), (c)(4), and (c)(6) were clarified to indicate that the incidental catch limits for vessels not fishing under a DAS are applicable to vessels holding either a monkfish incidental catch permit or a limited access permit.

In § 648.94, paragraphs (c)(4)–(c)(8), concerning the maximum trip limit of 150 lb (68 kg), are clarified to reflect that this represents tail weight, and the whole weight equivalent of 498 lb (226 kg) is added.

In § 648.94, paragraph (c)(8) has been revised to clarify the Councils' intent to include limited access scallop vessels not fishing under a scallop DAS since these vessels are authorized to fish under the same rules as General Category vessels when not fishing under a scallop DAS, as specified under § 648.52(a).

In § 648.94, paragraph (e) is modified to reflect that monkfish vessels declared in to the NFMA may transit the SFMA as long as they do not harvest or possess monkfish, or any other fish, from the SFMA. This change is being made to make this paragraph consistent with the changes made to paragraph (f) of this section in contained in Framework Adjustment 2 to the FMP (68 FR 22325, April 28, 2003).

In § 648.95(b), the annual declaration requirement for vessels participating in the Offshore Fishery Program in the SFMA has been modified to provide owners of limited access monkfish vessels with the opportunity to change their vessel's monkfish permit category within 45 days of the effective date of the vessel's permit, regardless of the fishing year. This modification is being made to reflect similar changes made under § 648.4(a)(9)(i)(A)(5). In addition, the first sentence of this paragraph has been modified to read, "To fish in the Offshore Fishery Program, a vessel must be issued a monkfish limited access Category F permit..."

In § 648.95, paragraph (e)(4) has been modified to clarify that monkfish limited access Category F vessels are only required to have an operational VMS unit during the designated season for the Offshore Fishery Program, and that these vessels may turn off their VMS units outside of this season unless otherwise required under the VMS notification requirements specified at § 648.10(b)(1).

In § 648.95, paragraph (g)(2) has been modified to more clearly reflect how the monkfish DAS allocations for vessels issued a monkfish limited access Category F permit will be adjusted.

In § 648.97(b), the title of the closure area has been modified to correctly reference the Lydonia Canyon Closure

Area. The title of this closure area was incorrectly referenced as the Oceanographer Canyon Closure Area in the proposed rule. In addition, the reference for the fifth coordinate point for the Lydonia Canyon Closure Area is modified to be LC5. The proposed rule incorrectly listed this coordinate point reference as LC1.

Pursuant to the Paperwork Reduction Act (PRA), part 902 of title 15 CFR displays 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 final rule codifies OMB Control Number 0648-0202 for § 648.95.

### Classification

The Administrator, Northeast Region, NMFS, determined that the FMP amendment implemented by this rule 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.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness of this rule. This final rule has been delayed due to that fact that NMFS solicited additional public comment on the proposed rule due to an error contained in the preamble concerning the qualification period for the modified limited entry program. In order to alleviate confusion concerning the qualification period for the modified limited entry program, NMFS re-opened the public comment period for a period of 10 days on February 24, 2005 (70 FR 9029), with the public comment period ending on March 7, 2005.

It is essential that the Offshore Fishery Program be implemented by the start of FY 2005 on May 1, 2005, because this management measure impacts the annual monkfish DAS allocations for vessels that participate in the program. In fact, the regulations implementing this management measure require vessels to participate in the Offshore Fishery Program for the entire fishing year due to the impact on a vessel's DAS allocation. If the program were implemented after the start of the fishing year, vessels intending to participate in the program would be unable to fish under a monkfish DAS until the program became effective. In addition, vessels intending to participate in the program that fish under a monkfish DAS, under their standard limited access permit category

(i.e., Category A, B, C or D), prior to the implementation of the program would be prohibited from participating in the Offshore Fishery Program during FY 2005. In both cases, the inability to fish would result in revenue loss, to some extent. Vessels that do not fish under a monkfish DAS until the Offshore Fishery Program is implemented would incur revenue losses resulting from the lost fishing time. On the other hand, vessels that are unable to participate in the Offshore Fishery Program because they fished under a monkfish DAS prior to the implementation of this program, would not be able to take advantage of the economic benefits of the program during FY 2005, forgoing potential fishing opportunities.

Because the Offshore Fishery Program must be implemented at the start of the fishing year, the Lydonia and Oceanographer Canyon closure areas must also be implemented at the start of the fishing year in order for their role as EFH protection measures to be effective. The purpose of the canyon closure areas is to minimize, to the extent practicable, the impacts to EFH resulting from the anticipated expansion of an offshore monkfish fishery under the Offshore Fishery Program. The closure areas are intended to be pre-emptive due to the long time-period it takes the vulnerable habitat contained within these areas to recover from the effects of fishing activities. Thus, the benefits of protecting vulnerable EFH, including deep-water coral habitat, located within the Lydonia and Oceanographer Canyon closure areas would be foregone if these canyon closure areas are not implemented in conjunction with the Offshore Fishery Program.

The remaining management measures contained in this rule will impose little to no additional regulatory burden, nor do they require additional time for vessels to come into compliance. The measures to reduce the monkfish minimum fish size for the SFMA, increase the incidental catch limits for vessels not fishing under a DAS program, and remove the 20-day block requirement for category A and B vessels would alleviate economic burden by increasing fishing opportunities by enabling vessels to land fish that would otherwise be discarded, or by enabling vessels to fish when they would otherwise be unable to fish. Furthermore, the three regulatory changes being made in this final rule correct errors in the monkfish regulations as described in the preamble of this final rule. These regulatory changes either increase economic opportunities to vessels by increasing the amount of monkfish a vessel can

land, or have no actual effect since they simply clarify existing regulations. To delay the implementation of these measures and regulatory changes would cause undue economic harm. In addition, delaying the implementation of these measures, while implementing other measures on May 1, 2005, would cause confusion among members of the fishing industry, and impede enforcement of the new measures. Finally, the measure to restrict the size of roller gear that can be used by monkfish trawl vessels to 6-inches in diameter would impose an additional restriction on these vessels, but would result in little to no economic harm since monkfish trawl vessels that fish in the SFMA already use gear that complies with this new restriction. The purpose of this measure is to prevent monkfish trawl vessels from using larger roller gear, which would enable them to fish in areas containing complex bottom habitat that have been determined to be vulnerable to the effects of trawl fishing activities. Thus, implementing this measure on May 1, 2005, in conjunction with the other management measures contained in this amendment would provide immediate environmental benefits with little to no economic harm. Therefore, to delay the effective date of these regulations would unnecessarily forgo substantial environmental benefits, and significant economic benefits to the affected public, with little or no purpose served by the delay. Accordingly, there is good cause under 5 U.S.C. 553(d)(3) to establish an effective date that is less than 30 days after the date of publication if this final rule.

The Council prepared an FSEIS for this FMP amendment. The FSEIS was filed with the Environmental Protection Agency on January 7, 2005. A notice of availability was published in the **Federal Register** on January 14, 2005 (70 FR 2630). Through the FSEIS, NMFS has analyzed project alternatives, associated environmental impacts, the extent to which these impacts could be mitigated, and has considered the objectives of the proposed action in light of statutory mandates, including the Magnuson-Stevens Act. NMFS has also considered public and agency comments received during the EIS review periods. In balancing the analysis and public interest, NMFS has decided to partially approve the Council's preferred alternative. NMFS also concludes that all practicable means to avoid, minimize, or compensate for environmental harm from the proposed action have been adopted. In partially approving

Amendment 2 on March 30, 2005, NMFS issued a ROD identifying the selected alternative. A copy of the ROD is available from NMFS (see ADDRESSES).

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

#### Final Regulatory Flexibility Analysis

This section constitutes the FRFA, which NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared in support of Amendment 2 to the FMP. The FRFA describes the economic impact that this final rule will have on small entities. This FRFA incorporates the IRFA, comments on the proposed rule, NMFS's responses to those comments, and the analyses completed to support the action. There are no Federal rules that may duplicate, overlap, or conflict with this final rule. A copy of the IRFA is available from the NEFMC (see ADDRESSES).

A description of the reasons why action by the agency is being taken, and the objectives of, and legal basis for, this action is contained in the preambles to the proposed (January 14, 2005; 70 FR 2586) and final rules, and is not repeated here. This action is taken under the authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

NMFS has disapproved the management measure that would have provided owners of limited access monkfish vessels with a one-time opportunity to reset their vessel's baseline characteristics to be those associated with the vessel's first Federal limited access permit. This management measure has been disapproved because NMFS determined it does not comply with the National Standard 7 of the Magnuson-Stevens Act. A complete discussion of the reasons why this measure was disapproved is provided in the preamble of this rule.

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

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration's size standards for small fishing businesses (less than \$3.5 million in gross sales) and, therefore, the analysis of alternatives to minimize impacts in Amendment 2 also applies to this FRFA. This final rule will affect all Federal monkfish permit holders. For FY 2001, the year used as the basis for the analysis, there were 723 vessels holding limited access monkfish permits, and 1,977 vessels holding incidental catch permits. As of January

27, 2005, there were 713 vessels holding limited access monkfish permits, and 2,057 vessels holding monkfish incidental catch permits. The difference between the number of vessels holding limited access monkfish permits during FY 2001 versus during FY 2004 is primarily the result of vessel replacements and permits being moved into Confirmation of Permit History. Furthermore, the modified limited entry program for vessels fishing in the southern range of the fishery contained in this final rule is estimated to affect five vessels.

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

##### Reporting and Recordkeeping Requirements

The measures approved under Amendment 2 include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) Annual declaration into the Offshore Fishery Program on the initial vessel permit application or vessel permit renewal application; (2) VMS purchase and installation; (3) VMS proof of installation; (4) automated VMS polling of vessel position once per hour while fishing under a monkfish DAS in the Offshore Fishery Program; (5) request to power down VMS unit for a minimum of 30 days; (6) initial application for a limited access monkfish permit (Category G or H) under the modified limited entry program for vessels fishing south of 38°20' N. lat.; (7) renewal of limited access monkfish permit (Category G or H) under the modified limited entry program for vessels fishing south of 38°20' N. lat.; (8) appeal of the denial of a limited access monkfish permit (Category G or H) under the modified limited entry program for vessels fishing south of 38°20' N. lat.; (9) application for a vessel operator permit for new limited access monkfish vessels; (10) vessel replacement or upgrade application for new limited access monkfish vessels; (11) confirmation of permit history application for new limited access monkfish vessels; (12) DAS reporting requirements (call-in/call-out) for new limited access monkfish vessels; (13) application for Good Samaritan DAS credit for new limited access monkfish vessels; (14) annual gillnet declaration and tag order request for new monkfish limited access vessels; (15) requests for additional gillnet tags for new monkfish limited access vessels; (16) notification of lost tags and request for replacement tags for new limited access vessels; and (17)

requests for an LOA to fish for monkfish in NAFO Regulatory Area under the proposed exemption program. 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 3, 2005.

#### Other Compliance Requirements

All vessels participating in the Offshore Fishery Program will be required to purchase and install a VMS unit. The average VMS unit offered by the two vendors currently approved by NMFS costs approximately \$3,100 to purchase and install. Many of the limited access monkfish vessels expected to participate in the Offshore Fishery Program also possess limited access NE multispecies permits. Since several new programs implemented under Amendment 13 to the NE Multispecies FMP also require the use of VMS, it is estimated that half of the 50 vessels expected to participate in the Offshore Fishery Program already have VMS units through participation in these NE multispecies programs. Thus, only 25 additional limited access monkfish vessels are expected to be required to purchase a VMS in order to participate in the Offshore Fishery Program being implemented in Amendment 2. This results in a combined one-time cost of \$77,500 for these 25 vessels. In addition, the average monthly cost to operate a VMS unit is \$150. This results in a combined annual cost of \$45,000 for these new VMS users. Five vessels fishing south of 38°20' N. lat. are expected to qualify for a limited access monkfish permit under Amendment 2. These vessels will be required to obtain a Federal vessel operator permit, if they do not already have one. These permits cost approximately \$10 due to the need for a color photograph, and are valid for 3 years. As a result, the yearly cost to these five vessels is estimated at \$16.67, or approximately \$3.33 per vessel. Finally, limited access monkfish vessels using gillnet gear must purchase gillnet tags. Each tag costs \$1.20 and may be used for at least 3 years. Monkfish vessels are allowed to use up to 160 gillnets. Therefore, if the five vessels fishing south of 38°20' N. lat. expected to qualify for a limited access monkfish permit under Amendment 2 elect to fish with gillnet gear, yearly costs associated with purchasing gillnet tags for each vessel will be a maximum of \$64 (i.e., \$192 every 3 years).

**A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments**

NMFS received a total of 15 public comments on Amendment 2 and its proposed rule. None of the comments received were specific to the IRFA. However, one comment indirectly dealt with the economic impacts to small entities (vessels) resulting from the management measures presented in the proposed rule to implement Amendment 2. That comment and NMFS's response follow:

**Comment:** One commentor stated that the reduction in the monkfish minimum size limit for the SFMA could lead to a reduction in the price of monkfish due to vessels landing increased quantities of smaller fish.

**Response:** Since monkfish is marketed by size category, it is possible that an increase in landings of smaller monkfish could lead to a reduction in the ex-vessel price for those size classes. However, it is not possible to predict changes in ex-vessel price because the monkfish market is international, with the majority of monkfish caught in U.S. waters exported to foreign countries. Therefore, ex-vessel price is primarily determined by foreign demand as well as landings in those countries. Furthermore, a decrease in ex-vessel price may not equate to a reduction in revenues since total revenues are dependant on the amount of monkfish landed and an increase in the amount of small monkfish landed (fish that otherwise would have to have been discarded) may offset any decrease in ex-vessel price.

The economic analysis of the reduction in the monkfish minimum size limit for the SFMA contained in Section 6.4.1.2 of the FSEIS states that this measure will increase economic opportunities for vessels fishing in the SFMA because vessels will be allowed to land fish that would otherwise be discarded. Without detailed information on the size distribution of the commercial catch in both management areas, it is difficult to determine the extent of any economic benefits resulting from the increased economic opportunity. Similarly, without an understanding of the commercial size distribution under current regulations, it is difficult to assess the impact of the reduction in minimum fish size on ex-vessel price.

**Description of Actions Taken to Minimize the Significant Economic Impact on Small Entities**

Nearly all of the management measures being implemented in this final rule provide increased economic opportunity and/or reduce the regulatory burden on vessels fishing for monkfish. A discussion of these measures is provided in the following paragraphs. Conversely, the measures to minimize the effects of monkfish fishing on EFH are expected to have some negative economic impact. The measure to establish a 6-inch (15.2-cm) maximum roller gear diameter for trawl vessels fishing under a monkfish DAS in the SFMA could have a short-term negative economic impact on some vessels since vessels using non-conforming gear will be required to bear the cost of making the necessary changes. According to individuals in the fishing industry, this roller gear diameter is already used by most vessels fishing in the SFMA, thus reducing the potential impact. The economic effect of closing Lyndonia and Oceanographer Canyons to vessels fishing under a monkfish DAS is expected to be zero based upon Vessel Trip Report (VTR) data for calendar years 1999 and 2001 which showed that no trips took place in either of these closure areas. The non-preferred EFH alternative to close up to 12 large, steep-walled canyons would have affected between 2 and 24 trips according to 2001 VTR data. Therefore, this non-preferred alternative would have been more burdensome than the selected closure alternative.

The measures to modify monkfish incidental catch limits that are being implemented in Amendment 2 will provide increased economic opportunities since they would enable vessels to land a higher incidental catch of monkfish than previously authorized, or in the case of General Category scallop vessels and surfclam and ocean quahog vessels, to land a small incidental catch of monkfish when it was previously prohibited. The no-action alternatives, i.e., not modifying the incidental catch limits, would have been more burdensome since the prohibition on retaining monkfish with dredge gear for General Category scallop vessels and surfclam and ocean quahog vessels would have remained in effect, and the incidental catch limits for other vessels would have remained at 50 lb (23 kg) tail weight per trip. The other non-preferred alternative to increase the maximum possession limit to 500 lb (230 kg), versus a maximum of 150 lb (68 kg) under the preferred alternative, would not have affected the total

number of potential vessels that may benefit from the increased incidental catch limit, but would have enabled vessels to retain more monkfish during trips longer than 3 days in duration. Thus, this alternative could have resulted in slightly greater economic benefits (an average of \$2,900 for each of the 112 affected vessels) in comparison to the preferred alternative. The Councils chose not to select this alternative due to a lack of evidence that the monkfish bycatch problem would not be fully addressed by a maximum possession limit of 150 lb (68 kg), and due to concerns that a higher maximum possession limit would encourage vessels to target monkfish.

The measure to reduce the monkfish minimum size limit for vessels fishing in the SFMA will enable vessels that fish in this area to land monkfish that were previously discarded. Thus, not only does this measure reduce the regulatory burden on vessels that fish in the SFMA, it provides increased economic opportunity. The other non-preferred alternative would have decreased the minimum size in both management areas to 10 inches (25.4 cm) tail length. This alternative would have resulted in increased economic opportunities for vessels fishing in both management areas, with a potentially greater economic benefit to vessels fishing in the SFMA. Although this alternative would have likely resulted in greater economic benefits than the preferred alternative, the Councils chose not to select this alternative due to concerns expressed by the Councils and fishing industry regarding the impact of a reduction in the minimum fish size on the monkfish resource, and the creation of incentives for vessels to target smaller monkfish. The no action alternative would have been more burdensome since it would have retained the larger minimum fish size for vessels fishing in the SFMA of 14 inches (35.6 cm) tail length, however, the elimination of the minimum fish size would have been the least burdensome. The Councils chose not to eliminate the minimum fish size due to concerns that this would encourage vessels to target small monkfish.

The proposal to remove the 20-day spawning block will result in a reduction in regulatory burden compared to current requirements for limited access monkfish Category A and B vessels. Furthermore, the removal of this requirement will provide these vessels with greater flexibility in choosing when they want to fish for monkfish. The non-preferred alternative would have doubled the current 20-day spawning block to 40 days. This

alternative would have placed a greater burden on trip scheduling and planning, and therefore is considered more burdensome than either the no-action or the preferred alternative.

The Offshore Fishery Program in the SFMA and the NAFO Regulated Area Exemption Program both provide vessels with increased opportunity to target monkfish in offshore areas. The Offshore Fishery Program will allow vessels that participate in the program to use their available fishing time more efficiently by effectively increasing the amount of monkfish that the vessel could retain per DAS. Furthermore, because vessels that participate in the Offshore Fishery Program will use fewer total DAS, operational costs will be reduced potentially resulting in higher profitability in comparison to the no action alternative. The NAFO Regulatory Area Exemption Program will relieve vessels fishing for monkfish in the NAFO Regulatory Area from Federal monkfish regulations within the EEZ. The economic benefit of this exemption program, in comparison to the no action alternative, cannot be estimated since the extent that current regulations inhibit the ability of vessels to fish for monkfish in the NAFO Regulatory Area is unknown. However, the reduction in regulatory burden resulting from the implementation of this exemption program has a potential positive economic impact, in comparison to the no action alternative, since monkfish regulations in the EEZ are more restrictive than NAFO measures.

The modification of the monkfish limited entry program to include vessels fishing south of 38°20' N. lat. will restore economic opportunities to some vessels that fished for monkfish in Federal waters prior to the implementation of FMP, but did not qualify for a limited access permit under the original criteria established in the FMP. Preliminary estimates indicate that five vessels will qualify for a limited access permit under the modified limited entry program. Thus, in comparison to the no action alternative, the proposed action will increase economic opportunities resulting in economic benefits. The non-preferred alternatives for the modified limited entry program would have either increased (seven vessels under Option 1) or decreased (three vessels under Options 2 and 4) the number of vessels that would qualify for monkfish limited access permits, with commensurate economic benefits for the qualifying vessels. It is possible that the addition of the limited access vessels under the preferred or non-preferred

alternatives could result in reduced trip limits for vessels fishing in the SFMA since the target TAC will be spread across a greater number of vessels. However, the economic impact of such a trip limit reduction cannot be reliably estimated at this time.

The economic impacts of the DAS set-aside and DAS exemption programs will be re-distributive in nature at most. The proposed programs will reduce the total number of monkfish DAS allocated to the fleet by 500 DAS, distributing the reduction equally across all limited access vessels. Limited access vessels that utilize their entire annual monkfish DAS allocation and that do not participate in these cooperative research programs will be minimally impacted by the slight reduction (less than one) in DAS. However, these programs will provide increased fishing opportunities to vessels that utilize all of their annual monkfish DAS and participate in monkfish research activities. Vessels that do not utilize their full annual allotment of monkfish DAS will not be affected by the proposed programs.

The new framework measures contained in Amendment 2 will result in no direct economic impact. The addition of transferable monkfish DAS, measures to minimize the impact of the monkfish fishery on endangered or protected species, and measures to implement bycatch reduction devices to the list of frameworkable measures is administrative in nature. The economic impact of each measure will be analyzed in the associated framework action implementing the measure(s).

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all vessels issued a Federal monkfish permit (limited access and incidental), and to all Federal dealers issued a monkfish permit. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES) and are also available at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

This rule contains 17 new collection-of-information requirements subject to the PRA, which have been approved by OMB under control number 0648-0202. The public reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements. Send comments regarding these burden estimates 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](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

The new reporting requirements under OMB Control Number 0648-0202 and the estimated time for a response are as follows:

1. Annual declaration into the Offshore Fishery Program on initial vessel permit application or vessel permit renewal application, (30 min/response);
2. VMS purchase and installation, (1 hr/response);
3. VMS proof of installation, (5 min/response);
4. Automated VMS polling of vessel position once per hour while fishing under a monkfish DAS in the Offshore Fishery Program, (5 sec/response);
5. Request to power down VMS unit for a minimum of 30 days, (5 min/response);
6. Initial application for a limited access monkfish permit (Category G or H) under program for vessels fishing south of 38°20' N. lat., (45 min/response);
7. Renewal of limited access monkfish permit (Category G or H) under program for vessels fishing south of 38°20' N. lat., (30 min/response);
8. Appeal of denial of a limited access monkfish permit (Category G or H) under the program for vessels fishing south of 38°20' N. lat., (2 hr/response);
9. Application for a vessel operator permit for new limited access monkfish vessels, (1 hr/response);
10. Vessel replacement or upgrade application for new limited access monkfish vessels, (3 hr/response);
11. Confirmation of permit history application for new limited access monkfish vessels, (30 min/response);
12. DAS reporting requirements (call-in/call-out) for new limited access monkfish vessels, (2 min/response);
13. Application for Good Samaritan DAS credit for new limited access monkfish vessels, (30 min/response);
14. Annual gillnet declaration and tag order request, (10 min/response);
15. Requests for additional gillnet tags, (2 min/response);

16. Notification of lost tags and request for replacement tags, (2 min/response); and

17. Requests for a letter of authorization to fish for monkfish in the NAFO Regulatory Area under the proposed exemption program, (5 min/response).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to the 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, Recordkeeping and reporting requirements.

Dated: April 21, 2005.

**Rebecca Lent,**

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

■ For the reasons stated in the preamble, 15 CFR part 902 is 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**

\* \* \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number the information (All numbers begin with 0648-)
* * * * *	*
50 CFR	*
648.95	-0202
* * * * *	*

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

**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 § 648.2, the definition of “Prior to leaving port” is revised to read as follows:

**§ 648.2 Definitions.**

\* \* \* \* \*

*Prior to leaving port*, with respect to the call-in notification system for NE multispecies, and the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category C, D, F, G, or H permit provisions that are also fishing under a NE multispecies DAS, means no more than 1 hour prior to the time a vessel leaves the last dock or mooring in port from which that vessel departs to engage in fishing, including the transport of fish to another port. With respect to the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category A or B permit provisions, it means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

\* \* \* \* \*

■ 5. In § 648.4, the heading of paragraph (a)(9)(i) is revised; paragraphs (a)(9)(i)(B), (a)(9)(i)(M), (a)(9)(i)(N)(1), and (a)(9)(i)(N)(3) are revised; and paragraphs (a)(9)(i)(A)(5) through (a)(9)(i)(A)(7), and (a)(9)(i)(E)(4) are added to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(9) \* \* \*

(i) *Limited access monkfish permits.*

(A) \* \* \*

(5) *Category F permit (vessels electing to participate in the Offshore Fishery Program).* To fish in the Offshore Fishery Program, as described under § 648.95, vessels must apply for and be issued a Category F permit and fish under this permit category for the entire fishing year. The owner of a vessel, or authorized representative, may change the vessel’s limited access monkfish permit category within 45 days of the effective date of the vessel’s permit, provided the vessel has not fished under the monkfish DAS program during that fishing year. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel’s permit category will remain unchanged for the duration of the fishing year.

(6) *Category G permit (vessels restricted to fishing south of 38° 20’ N.*

*lat. as described in § 648.92(b)(9) that do not qualify for a monkfish limited access Category A, B, C, or D permit).* The vessel landed at least 50,000 lb (22,680 kg) tail weight or 166,000 lb (75,296 kg) whole weight of monkfish in the area south of 38°00’ N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(7) *Category H permit (vessels restricted to fishing south of 38°20’ N. lat. as described in § 648.92(b)(9) that do not qualify for a monkfish limited access Category A, B, C, D, or G permit).* The vessel landed at least 7,500 lb (3,402 kg) tail weight or 24,900 lb (11,294 kg) whole weight of monkfish in the area south of 38°00’ N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(B) *Application/renewal restrictions.* No one may apply for an initial limited access monkfish permit for a vessel after November 7, 2000, unless otherwise allowed in this paragraph (a)(9)(i)(B). Vessels applying for an initial limited access Category G or H permit, as described in paragraphs (a)(9)(i)(A)(6) and (7) of this section, must do so on or before April 30, 2006.

\* \* \* \* \*

(E) \* \* \*

\* \* \* \* \*

(4) A vessel that replaced a vessel that fished for and landed monkfish between March 15 through June 15 in the years 1995 through 1998, may use the replaced vessel’s history in lieu of, or in addition to, such vessel’s fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(6) and (7) of this section, unless the owner of the replaced vessel retained the vessel’s permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provision of paragraph (a)(1)(i)(D) of this section.

\* \* \* \* \*

(M) *Notification of eligibility for Category G and H permits.* (1) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available to inform them that they meet the qualification criteria described in paragraph (a)(9)(i)(A)(6) or (7) of this section and that they qualify for a limited access monkfish Category G or H permit. Vessel owners that pre-qualify for a Category G or H permit must apply for the limited access permit for which they pre-qualified on or before April 30, 2006, to meet the qualification requirements.

(2) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access monkfish Category G or H permit, and the vessel

owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access monkfish Category G or H permit on or before April 30, 2006, by submitting written evidence that the vessel meets the qualification requirements described in paragraph (a)(9)(i)(A)(6) or (7) of this section.

(N) \* \* \*

(1) An applicant denied a limited access monkfish Category G or H permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria described in paragraph (a)(9)(i)(A)(6) or (7) of this section. The appeal shall set forth the applicant's belief that the Regional Administrator made an error.

\* \* \* \* \*

(3) \* \* \*

(i) A vessel denied a limited access monkfish Category G or H permit may fish under the monkfish DAS program, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the monkfish DAS program. The letter of authorization must be carried on board the vessel. A vessel with such a letter of authorization shall not exceed the annual allocation of monkfish DAS as specified in § 648.92(b)(1) and must report the use of monkfish DAS according to the provisions of § 648.10(b) or (c), whichever applies. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the letter authorizing temporary participation in the monkfish fishery shall become invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the denial letter. If the appeal is approved, any DAS used during pendency of the appeal shall be deducted from the vessel's annual allocation of monkfish DAS for that fishing year.

(ii) *Monkfish incidental catch vessels (Category E)*. A vessel of the United States that is subject to these regulations and that has not been issued a limited access monkfish permit under paragraph (a)(9)(i)(A) of this section, is eligible for and may be issued a monkfish incidental catch (Category E) permit to fish for, possess, or land monkfish subject to the restrictions in § 648.94(c).

\* \* \* \* \*

■ 6. In § 648.9, paragraph (c)(1) introductory text is revised to read as follows:

§ 648.9 VMS requirements.

\* \* \* \* \*

(c) \* \* \*

(1) Except as provided in paragraph § 648.95(e)(4) and paragraph (c)(2) of this section, or unless otherwise required by § 648.60(f) or paragraph (c)(1)(ii) of this section, all required VMS units must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section.

\* \* \* \* \*

■ 7. In § 648.10, paragraph (b)(2)(v) is removed, paragraphs (c)(1) and (c)(3) are revised, and paragraph (b)(1)(ix) is added, to read as follows:

§ 648.10 DAS notification requirements.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ix) A limited access monkfish vessel electing to fish in the Offshore Fishery Program in the SFMA, as provided in § 648.95.

\* \* \* \* \*

(c) \* \* \*

(1) Less than 1 hour 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 this paragraph (c)(1), and, 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 Regional Administrator and providing the following information: Owner and caller name and phone number; vessel name and permit number; type of trip to be taken; port of departure; and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (b)(2)(iii) of this section. Vessels issued a limited access monkfish Category C, D, F, G, or H permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(i), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for

those monkfish DAS where there is not a concurrent NE multispecies DAS.

\* \* \* \* \*

(3) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, permit number, port of landing, and that the vessel has ended its trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(iii) of this section.

\* \* \* \* \*

■ 8. In § 648.14, the introductory text of paragraph (y) is revised; paragraphs (a)(125), (x)(8), (y)(1)(iii), (y)(3), (y)(7) and (y)(21) are revised; and paragraph (y)(1)(iv) is added to read as follows:

§ 648.14 Prohibitions.

(a) \* \* \*

(125) For vessels issued a limited access NE multispecies permit, or those issued a limited access NE multispecies permit and a limited access monkfish permit (Category C, D, F, G, or H), but are not fishing under the limited access monkfish Category A or B provisions as allowed under § 648.92(b)(2), call into the DAS program prior to 1 hour before leaving port.

\* \* \* \* \*

(x) \* \* \*

(8) *Monkfish*. All monkfish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of evidence demonstrates that such fish were harvested by a vessel that fished exclusively in the NAFO Regulatory Area, as authorized under § 648.17.

\* \* \* \* \*

(y) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel that engages in fishing for monkfish to do any of the following, unless otherwise fishing in accordance with, and exempted under, the provisions of § 648.17:

(1) \* \* \*

(iii) The monkfish were harvested in or from the EEZ by a vessel not issued a Federal monkfish permit that engaged in recreational fishing; or

(iv) The monkfish were harvested from the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

\* \* \* \* \*

(3) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, any monkfish without having been issued a valid monkfish vessel permit, unless the vessel fishes for monkfish exclusively in state waters, or exclusively in the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

(7) Fail to comply with the area restrictions applicable to limited access Category G and H vessels specified under § 648.92(b)(9).

(21) Fail to comply with the area declaration requirements specified at §§ 648.93(b)(2) and 648.94(f) when fishing under a scallop, NE multispecies, or monkfish DAS exclusively in the NFMA under the less restrictive monkfish possession limits of that area.

■ 9. Section 648.17 is revised to read as follows:

**§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.**

(a) *Fisheries included under exemption*—(1) *NE multispecies*. A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section, is exempt from NE multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the EEZ with NE multispecies on board the vessel, or landing NE multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(2) *Monkfish*. A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section is exempt from monkfish permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.91, 648.92 and 648.94, respectively, while transiting the EEZ with monkfish on board the vessel, or landing monkfish in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(b) *General requirements*. (1) The vessel operator has a valid letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest

fish in, or possess fish harvested in, or from, the EEZ;

(3) When transiting the EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

(4) The vessel operator complies with the High Seas Fishing Compliance Permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

■ 10. In § 648.80, paragraph (b)(5)(i)(B) is revised to read as follows:

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

- (b) \* \* \*
- (5) \* \* \*
- (i) \* \* \*

(B) All trawl nets must comply with the minimum mesh size specified under § 648.91(c)(1)(i).

■ 11. In § 648.82, paragraph (k)(4)(vi) is revised to read as follows:

**§ 648.82 Effort-control program for NE multispecies limited access vessels.**

- (k) \* \* \*
- (4) \* \* \*

(vi) *Monkfish Category C, D, F, G and H vessels*. A vessel that possesses a valid limited access NE multispecies DAS permit and a valid limited access monkfish Category C, D, F, G, or H permit and leases NE multispecies DAS to or from another vessel is subject to the restrictions specified in § 648.92(b)(2).

■ 12. In § 648.91, paragraphs (c)(1)(ii) and (c)(1)(iv) are revised, and paragraph (c)(3) is added to read as follows:

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

- (c) \* \* \*
- (1) \* \* \*

(i) *Trawl nets while on a monkfish and NE multispecies DAS*. Vessels issued a Category C, D, G, or H limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS are subject to the minimum mesh size allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i), depending upon, and consistent with, the NE multispecies regulated mesh area being fished, unless otherwise specified in this paragraph (c)(1)(ii). Trawl vessels participating in the Offshore Fishery Program, as described in § 648.95, and that have been issued a Category F

monkfish limited access permit, are subject to the minimum mesh size specified in paragraph (c)(1)(i) of this section.

\* \* \* \* \*

(iv) *Authorized gear while on a monkfish and scallop DAS*. Vessels issued a Category C, D, G, or H limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(i) of this section.

\* \* \* \* \*

(3) *SFMA trawl roller gear restriction*. The roller gear diameter on any vessel on a monkfish DAS in the SFMA may not exceed 6 inches (15.2 cm) in diameter.

■ 13. In § 648.92, paragraph (b)(5) is removed and reserved, paragraphs (b)(1)(i), (b)(2), (b)(6), and (b)(8)(i)(B) are revised; and paragraphs (b)(1)(iii), (b)(1)(iv), (b)(9) and (c) are added to read as follows:

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

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

(i) *General provision*. All limited access monkfish permit holders shall be allocated monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless modified by paragraph (b)(1)(ii) of this section according to the provisions specified at § 648.96(b)(3). The number of monkfish DAS to be allocated, before accounting for any such modification, is 40 DAS minus the amount calculated in paragraph (b)(1)(iv) of this section, unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iii) of this section. Limited access NE multispecies and limited access sea scallop permit holders who also possess a valid limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with their monkfish DAS, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

\* \* \* \* \*

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

(iv) *Research DAS set-aside*. A total of 500 DAS will be set aside and made available for cooperative research programs as described in paragraph (c) of this section. These DAS will 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 will 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 40 DAS and if there are 750 limited access permits issued in FY 2004, the number of DAS allocated to each vessel in FY 2005 will be 40 DAS minus (500 DAS divided by 750 permits), or 40 DAS minus 0.7 DAS, or 39.3 DAS.

(2) *Category C, D, F, G, or H limited access monkfish permit holders.* (i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies Category A DAS would also be used, unless otherwise authorized under § 648.85(b)(6). However, after all 30 NE multispecies Category A DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies.

(ii) *Category C, D, F, G, or H vessels that lease NE multispecies DAS.* (A) A monkfish Category C, D, F, G, or H vessel that has "monkfish-only" DAS, as specified in paragraph (b)(2)(i) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(k), is required to fish its

available "monkfish-only" DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C, D, F, G, or H vessel that leases DAS to another vessel(s), pursuant to § 648.82(k), is required to 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 40 unused monkfish DAS and 47 allocated NE multispecies DAS, leased 10 of its NE multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 NE multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

\* \* \* \* \*

(5) [Reserved]

(6) *Declaring monkfish DAS.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the monkfish DAS program using the notification requirements specified in § 648.10.

\* \* \* \* \*

(8) \* \* \*

(i) \* \* \*

\* \* \* \* \*

(B) *Category C, D, F, G, and H vessels that possess a limited access NE multispecies permit.* A vessel issued a valid monkfish limited access Category C, D, F, G, or H permit that possesses a valid limited access NE multispecies permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 150 gillnets. A vessel issued a NE multispecies limited access permit and a limited access monkfish permit, and fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 150 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

\* \* \* \* \*

(9) *Category G and H limited access permit holders.* (i) Vessels issued limited access Category G and H permits shall be restricted to fishing on a monkfish DAS in the area south of 38°20' N. lat.

(ii) Vessels issued valid limited access monkfish Category G or H permit that also possess a limited access NE multispecies or limited access scallop

permit are subject to the same provisions as Category C or D vessels, respectively, unless otherwise stated under this subpart F.

(c) *Monkfish Research—(1) DAS Set-Aside Program.* (i) NMFS will publish a Request for Proposals (RFP) in the **Federal Register** at least 3 months prior to the start of the upcoming fishing year, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the Councils.

(ii) NMFS shall convene a review panel that may include members of the Councils' Monkfish Oversight Committee, the Council's Research Steering Committee, and other technical experts, to review proposals submitted in response to the RFP.

(A) Each panel member shall recommend which research proposals should be authorized to utilize the research DAS set aside in accordance with paragraph (b)(1)(iv) of this section, based on the selection criteria described in the RFP.

(B) The Regional Administrator shall consider each panel member's recommendation, provide final approval of the projects, and notify applicants of the grant award through written notification to the project proponent. The Regional Administrator may exempt selected vessel(s) from regulations specified in each of the respective FMPs through the exempted fishing permit (EFP) process specified under § 600.745(b)(2).

(iii) The grant awards approved under the RFPs shall be for the upcoming fishing year. Proposals to fund research that would start prior to the fishing year are not eligible for consideration. Multi-year grant awards may be approved under an RFP for an upcoming fishing year, so long as the research DAS available under subsequent RFPs are adjusted to account for the approval of multi-year awards. All research trips shall be completed within the fishing year(s) for which the research grant was awarded.

(iv) Research projects shall be conducted in accordance with provisions approved and provided in an EFP issued by the Regional Administrator, as authorized under § 600.745(b)(2).

(v) If the Regional Administrator determines that the annual allocation of research DAS will not be used in its entirety once all of the grant awards have been approved, the Regional Administrator shall reallocate the unallocated research DAS as exempted DAS to be authorized as described in

paragraph (c)(2) of this section, and provide notice of the reallocation of DAS in the **Federal Register**. Any unused research DAS may not be carried over into the next fishing year.

(vi) For proposals that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(2) *DAS Exemption Program.* (i) Vessels that seek to conduct monkfish research within the current fishing year, and that were not selected in the RFP process during the previous fishing year, may seek exemptions from monkfish DAS for the purpose of conducting exempted fishing activities, as authorized at § 600.745(b), under the following conditions and restrictions:

(A) The request for a monkfish DAS exemption must be submitted along with a complete application for an EFP to the Regional Administrator. The requirements for submitting a complete EFP application are provided in § 600.745(b)(2);

(B) Exempted DAS must be available for usage. Exempted DAS shall only be made available by the Regional Administrator if it is determined that the annual set-aside of research DAS will not be used in its entirety, as described in paragraph (c)(1)(v) of this section. If exempted DAS are not available for usage, the applicant may continue to seek an exemption from monkfish DAS, but may be required to conduct an analysis of the impacts associated with the monkfish DAS exemption request before issuance of the EFP application will be considered; and

(C) For EFP applications that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(ii) Monkfish DAS exemption requests shall be reviewed and approved by the Regional Administrator in the order in which they are received.

■ 14. In § 648.93, paragraph (b) is revised to read as follows:

**§ 648.93 Monkfish minimum fish sizes.**

\* \* \* \* \*

(b) *Minimum fish size.* The minimum fish size for all vessels is 17 inches (43.2

cm) total length or 11 inches (27.9 cm) tail length.

■ 15. In § 648.94, paragraphs (b)(2)(i) through (b)(2)(iii), the heading of (b)(3) and paragraphs (b)(3)(i), (b)(3)(ii), (b)(4), (b)(5), (b)(6), (c) and (e) are revised, and paragraph (b)(2)(iv) is added to read as follows:

**§ 648.94 Monkfish possession and landing restrictions.**

\* \* \* \* \*

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

(i) *Category A, C, and G vessels.* Category A, C, and G vessels fishing under the monkfish DAS program in the SFMA may land up to 550 lb (250 kg) tail weight or 1,826 lb (828 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32), unless modified pursuant to § 648.96(b)(2)(ii).

(ii) *Category B, D, and H vessels.* Category B, D and H vessels fishing under the monkfish DAS program in the SFMA may land up to 450 lb (204 kg) tail weight or 1,494 lb (678 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32), unless modified pursuant to § 648.96(b)(2)(ii).

(iii) *Category F vessels.* Vessels issued a Category F permit are subject to the possession and landing restrictions specified at § 648.95(g)(1).

(iv) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(2)(i) through (iii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(3) *Category C, D, F, G, and H vessels fishing under the multispecies DAS program.*—(i) *NFMA*—(A) *Category C and D vessels.* There is no monkfish trip limit for a Category C or D vessel that is fishing under a NE multispecies DAS exclusively in the NFMA.

(B) *Category F, G, and H vessels.* Vessels issued a Category F, G, or H permit that are fishing under a NE multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(ii) *SFMA*—(A) *Category C, D, and F vessels.* If any portion of a trip is fished only under a NE multispecies DAS, and not under a monkfish DAS, in the SFMA, a Category C, D, or F vessel 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.

(B) *Category G and H vessels.* Vessels issued a Category G or H permit that are fishing under a NE multispecies DAS in the SFMA are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

\* \* \* \* \*

(4) *Category C, D, F, G, or H vessels fishing under the scallop DAS program.* A Category C, D, F, G, or H vessel fishing under a scallop DAS may land up to 300 lb (136 kg) tail weight or 996 lb (452 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).

(5) *Category C, D, F, G, or H scallop vessels declared into the monkfish DAS program without a dredge on board, or not under the net exemption provision.* Category C, D, G, or H vessels that have declared into the monkfish DAS program and that do not fish with or have a dredge on board, or that are not fishing with a net under the net exemption provision specified in § 648.51(f), are subject to the same landing limits as specified in paragraphs (b)(1) and (b)(2) of this section, or the landing limit specified in § 648.95(g)(1), if issued a Category F permit. Such vessels are also subject to provisions applicable to Category A and B vessels fishing only under a monkfish DAS, consistent with the provisions of this part.

(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 multispecies, scallop, or monkfish DAS are the same as the possession limits for a vessel issued a monkfish incidental catch permit specified under paragraphs (c)(3) through (c)(6) of this section.

\* \* \* \* \*

(c) *Vessels issued a monkfish incidental catch permit*—(1) Vessels fishing under a NE multispecies DAS—(i) *NFMA.* Vessels issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category F, G, or H permit, fishing under a NE multispecies DAS exclusively in the NFMA, may land up to 400 lb (181 kg) tail weight or 1,328 lb (602 kg) whole weight of monkfish per DAS, or 50 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.

(ii) *SFMA*. If any portion of the trip is fished by a vessel issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category G or H permit, under a NE multispecies DAS in the SFMA, the vessel may land up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor).

(2) *Scallop vessels fishing under a scallop DAS*. A scallop vessel issued a monkfish incidental catch (Category E) permit fishing under a scallop DAS, may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor).

(3) *Vessels fishing with large mesh and not fishing under a DAS*—(i) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs, or the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at §§ 648.80(a)(3)(i), (a)(4)(i), and (b)(2)(i), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(ii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE or MA RMAs west of the MA Exemption Area boundary with mesh no smaller than specified at § 648.104(a)(1) while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, but not to exceed 450 lb (204 kg) tail weight or 1,494 lb (678 kg) whole weight of monkfish. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(4) *Vessels fishing with small mesh and not fishing under a DAS*. A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing with mesh smaller than the mesh size specified by area in

paragraph (c)(3) of this section, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land only 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.

(5) *Small vessels*. A vessel issued a limited access NE multispecies small vessel category permit and a valid monkfish incidental catch (Category E) permit that is less than 30 ft (9.1 m) in length and that elects not to fish under the NE multispecies DAS program, 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.

(6) *Vessels fishing with handgear*. A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, NE multispecies, or scallop DAS, 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.

(7) *Vessels fishing with surfclam or ocean quahog dredge gear*. A vessel issued a valid monkfish incidental catch (Category E) permit and a valid surfclam or ocean quahog permit, while fishing exclusively with a hydraulic clam dredge or mahogany quahog dredge, 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.

(8) *Scallop vessels not fishing under a scallop DAS with dredge gear*. A vessel issued a valid monkfish incidental catch (Category E) permit and a valid General Category scallop permit or a limited access scallop vessel not fishing under a scallop DAS, while fishing exclusively with scallop dredge 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.

(e) *Transiting*. A vessel that has declared into the NFMA for the purpose of fishing for monkfish under the less restrictive measures of the NFMA, may

transit the SFMA provided that the vessel does not harvest or possess monkfish, or any other fish, from the SFMA, and the vessel's gear is properly stowed and not available for immediate use in accordance with the regulations specified under § 648.23(b).

\* \* \* \* \*

■ 16. Section 648.95 is added to read as follows:

**§ 648.95 Offshore Fishery Program in the SFMA.**

(a) *General*. Any vessel issued a valid monkfish limited access permit is eligible to apply for a Category F permit in order to fish in the Offshore Fishery Program in the SFMA.

(1) A vessel issued a Category F permit is subject to the specific provisions and conditions of this section while fishing on a monkfish DAS.

(2) When not fishing on a monkfish DAS, a Category F vessel may fish under the regulations applicable to the monkfish incidental catch (Category E) permit, specified under paragraph § 648.94(c). When fishing on a NE multispecies DAS in the NFMA, a Category F vessel that also possesses a NE multispecies limited access permit is subject to the possession limits applicable to vessels issued an incidental catch permit as described in § 648.94(c)(1)(i).

(3) Limited access Category C or D vessels that apply for and are issued a Category F permit remain subject to the provisions specific to Category C and D vessels, unless otherwise specified under this subpart F.

(b) *Declaration*. To fish in the Offshore Fishery Program, a vessel must obtain a monkfish limited access Category F permit and fish under this permit for the entire fishing year, subject to the conditions and restrictions specified under this part. The owner of a vessel, or authorized representative, may change the vessel's limited access monkfish permit category within 45 days of the effective date of the vessel's permit, provided the vessel has not fished under the monkfish DAS program during that fishing year. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel's permit category will remain unchanged for the duration of the fishing year.

(c) *Offshore Fishery Program Area*. The Offshore Fishery Program Area is bounded on the south by 38°00' N. lat., and on the north, west, and east by the area coordinates specified in § 648.23(a).

(d) *Season*. October 1 through April 30 each year.

(e) *Restrictions.* (1) Except for the transit provisions provided for in paragraph (f) of this section, a vessel issued a valid Category F permit may only fish for, possess, and land monkfish in or from the Offshore Fishery Program Area while on a monkfish DAS.

(2) A vessel enrolled in the Offshore Fishery Program is restricted to fishing under its monkfish DAS during the season in paragraph (d) of this section.

(3) A vessel issued a Category F permit that is fishing on a monkfish DAS is subject to the minimum mesh size requirements applicable to limited access monkfish Category A and B vessels, as specified under § 648.91(c)(1)(i) and (c)(1)(iii), as well as the other gear requirements specified in paragraphs (c)(2) and (c)(3).

(4) A vessel issued a Category F permit must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10 during the entire season established under paragraph (d) of this section. Unless otherwise required to maintain an operational VMS unit under the VMS notification requirements specified at § 648.10(b)(1), a vessel issued a Category F permit may turn off its VMS unit outside of this season.

(f) *Transiting.* A vessel issued a Category F permit and fishing under a monkfish DAS that is transiting to or from the Offshore Fishery Program Area, described in paragraph (c)(1) of this section, shall have all gear stowed and not available for immediate use in accordance with the gear stowage provisions specified under § 648.23(b).

(g) *Monkfish possession limits and DAS allocations.* (1) A vessel issued a Category F permit may land up to 1,600 lb (726 kg) tail weight or 5,312 lb (2,409 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail weight and whole weight based on the conversion factor of 3.32).

(2) The monkfish DAS allocation for vessels issued a Category F permit shall be equal to the trip limit applicable to the vessel's monkfish limited access permit category divided by the fixed daily possession limit specified in paragraph (g)(1) of this section, and then multiplied by the DAS allocation for limited access monkfish vessels not issued Category F permits, specified under § 648.92(b)(1). For example, if a vessel has a limited access monkfish Category C permit, and the applicable trip limit is 800 lb (363 kg) for this category, and the vessel has an annual allocation of 40 monkfish DAS, then the monkfish DAS allocated to that vessel

when issued a Category F permit would be 20 monkfish DAS (800 lb divided by 1,600 lb, multiplied by 40 monkfish DAS equals 20 DAS). Any carryover monkfish DAS will be included in the calculation of monkfish DAS for Category F vessels.

(3) Vessels issued a Category F permit that are fishing under a NE multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(h) *DAS usage by NE multispecies or sea scallop limited access permit holders.* A vessel issued a Category F permit that also has been issued either a NE multispecies or sea scallop limited access permit, and is fishing on a monkfish DAS, is subject to the DAS usage requirements specified in § 648.92(b)(2).

■ 17. In § 648.96, paragraph (c)(1)(i) is revised to read as follows:

**§ 648.96 Monkfish annual adjustment process and framework specifications.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Based on their annual review, the MFMC may develop and recommend, in addition to the target TACs and management measures established under paragraph (b) of this section, other options necessary to achieve the Monkfish FMP's goals and objectives, which may include a preferred option. The MFMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MFMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MFMC may include any of the management measures in the Monkfish FMP, including, but not limited to: Closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; and other frameworkable measures included in §§ 648.55 and 648.90.

\* \* \* \* \*

■ 18. Section 648.97 is added to subpart F to read as follows:

**§ 648.97 Closed areas.**

(a) *Oceanographer Canyon Closed Area.* No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Oceanographer Canyon Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

**OCEANOGRAPHER CANYON CLOSED AREA**

Point	N. Lat.	W. Long.
(1) OC1	40°10'	68°12'
(2) OC2	40°24'	68°09'
(3) OC3	40°24'	68°08'
(4) OC4	40°10'	67°59'
(5) OC1	40°10'	68°12'

(b) *Lydonia Canyon Closed Area.* No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Lydonia Canyon Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

**LYNDONIA CANYON CLOSED AREA**

Point	N. Lat.	W. Long.
(1) LC1	40°16'	67°34'
(2) LC2	40°16'	67°42'
(3) LC3	40°20'	67°43'
(4) LC4	40°27'	67°40'
(5) LC5	40° 27'	67°38'
(6) LC1	40°16'	67°34'

[FR Doc. 05-8450 Filed 4-26-05; 2:21 pm]

BILLING CODE 3510-22-S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 522**

**Implantation or Injectable Dosage Form New Animal Drugs; Penicillin G Benzathine and Penicillin G Procaine Sterile Suspension**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Cross Vetpharm Group Ltd. The supplemental NADA provides for the addition of