

(111) 42°55.70' N. lat., 124°52.79' W. long.;

(112) 42°54.12' N. lat., 124°47.36' W. long.;

(113) 42°43.99' N. lat., 124°42.38' W. long.;

(114) 42°38.23' N. lat., 124°41.25' W. long.;

(115) 42°33.02' N. lat., 124°42.38' W. long.;

(116) 42°31.89' N. lat., 124°42.04' W. long.;

(117) 42°30.08' N. lat., 124°42.67' W. long.;

(118) 42°28.27' N. lat., 124°47.08' W. long.;

(119) 42°25.22' N. lat., 124°43.51' W. long.;

(120) 42°19.22' N. lat., 124°37.92' W. long.;

(121) 42°16.28' N. lat., 124°36.11' W. long.;

(122) 42°05.65' N. lat., 124°34.92' W. long.;

(123) 42°00.00' N. lat., 124°35.27' W. long.;

(124) 42°00.00' N. lat., 124°35.26' W. long.;

(125) 41°47.04' N. lat., 124°27.64' W. long.;

(126) 41°32.92' N. lat., 124°28.79' W. long.;

(127) 41°24.17' N. lat., 124°28.46' W. long.;

(128) 41°10.12' N. lat., 124°20.50' W. long.;

(129) 40°51.41' N. lat., 124°24.38' W. long.;

(130) 40°43.71' N. lat., 124°29.89' W. long.;

(131) 40°40.14' N. lat., 124°30.90' W. long.;

(132) 40°37.35' N. lat., 124°29.05' W. long.;

(133) 40°34.76' N. lat., 124°29.82' W. long.;

(134) 40°36.78' N. lat., 124°37.06' W. long.;

(135) 40°32.44' N. lat., 124°39.58' W. long.;

(136) 40°24.82' N. lat., 124°35.12' W. long.;

(137) 40°23.30' N. lat., 124°31.60' W. long.;

(138) 40°23.52' N. lat., 124°28.78' W. long.;

(139) 40°22.43' N. lat., 124°25.00' W. long.;

(140) 40°21.72' N. lat., 124°24.94' W. long.;

(141) 40°21.87' N. lat., 124°27.96' W. long.;

(142) 40°21.40' N. lat., 124°28.74' W. long.;

(143) 40°19.68' N. lat., 124°28.49' W. long.;

(144) 40°17.73' N. lat., 124°25.43' W. long.;

(145) 40°18.37' N. lat., 124°23.35' W. long.;

(146) 40°15.75' N. lat., 124°26.05' W. long.;

(147) 40°16.75' N. lat., 124°33.71' W. long.;

(148) 40°16.29' N. lat., 124°34.36' W. long.; and

(149) 40°10.00' N. lat., 124°21.12' W. long.

\* \* \* \*

**Authority:** 16 U.S.C. 773–773k.

Dated: April 21, 2003.

**Rebecca Lent,**

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

[FR Doc. 03–10281 Filed 4–25–03; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

**[Docket No. 030225045–3096–02; I.D.  
020603A]**

**RIN 0648–AQ29**

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements measures contained in Framework Adjustment 2 to the Monkfish Fishery Management Plan (FMP). This final rule modifies the monkfish overfishing definition reference points and optimum yield (OY) target control rule to be consistent with the best scientific information available and the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This rule also implements an expedited process for setting annual target total allowable catch levels (TACs); establishes a method for adjusting monkfish trip limits and days-at-sea (DAS) allocations to achieve the annual target TACs; and establishes target TACs and corresponding trip limits for the 2003 fishing year (FY 2003). As a result, this rule eliminates the default measures adopted in the original FMP that would have resulted in the elimination of the directed monkfish fishery and reduced incidental catch limits. Finally, this final rule clarifies the regulations

pertaining to the monkfish area declaration requirements by specifying that vessels intending to fish under either a monkfish, Northeast (NE) multispecies, or scallop DAS, under the less restrictive measures of the Northern Fishery Management Area (NFMA), declare their intent to fish in the NFMA for a minimum of 30 days.

**DATES:** Effective May 1, 2003.

**ADDRESSES:** Copies of Framework Adjustment 2 to the FMP, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>. A copy of the Final Regulatory Flexibility Analysis (FRFA) is available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

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

**SUPPLEMENTARY INFORMATION:** The monkfish fishery is jointly managed by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC) (Councils), with the NEFMC having the administrative lead. The FMP currently contains default measures that would eliminate the directed monkfish fishery by allocating zero monkfish days-at-sea (DAS). These measures were scheduled to take effect during Year 4 (beginning May 1, 2002) of the FMP's 10-year rebuilding schedule, but were delayed until May 1, 2003, as a result of the implementation of an emergency interim rule (67 FR 35928; May 22, 2002) and its extension (67 FR 67568; November 6, 2002). Recent analyses have indicated that these default measures are no longer appropriate. Furthermore, recent stock assessments have invalidated the fishing mortality (F) reference points contained in the FMP, and have suggested alternative reference points to be incorporated into the FMP's overfishing definition and control rules. As a result of delays in the development of Amendment 2 to the FMP, the NEFMC initiated Framework Adjustment 2 at its June 24–26, 2002, meeting in order to prevent implementation of the restrictive default measures on May 1, 2003. The NEFMC approved the framework at its November 5–7, 2002, meeting, and the MAFMC approved the framework at its

December 10–12, 2002, meeting. A proposed rule was published in the **Federal Register** on March 7, 2003 (68 FR 11023), with public comment accepted through March 24, 2003. The measures contained in this final rule are unchanged from those published in the proposed rule with the exception of two minor technical changes that were identified during the public comment period, which are described below. A complete discussion of the development of these measures appeared in the preamble of the proposed rule and is not repeated here.

Framework 2 implements revisions to the overfishing definition contained in the FMP. This action revises the threshold fishing mortality rate ( $F_{\text{threshold}}$ ), the criterion by which overfishing status is determined, to be consistent with the most recent scientific advice (SAW 34, January 2002). The  $F_{\text{threshold}}$  reference point is revised by setting  $F_{\text{threshold}}$  equal to  $F_{\text{max}}$ .  $F_{\text{max}}$  is the proxy for the fishing mortality rate that will achieve maximum sustainable yield (MSY) from a rebuilt stock. The 34<sup>th</sup> Stock Assessment Workshop recently estimated  $F_{\text{max}}$  to be equivalent to  $F=0.2$ . Framework 2 also revises the minimum biomass threshold ( $B_{\text{threshold}}$ ), the criterion by which a stock is determined to be overfished, to be consistent with the National Standard Guidelines. Given the poor amount of scientific data on the monkfish resource, Framework 2 revises the  $B_{\text{threshold}}$  value in the FMP to be equivalent to one-half of the  $B_{\text{target}}$  established for each management area. As a result, this action establishes a  $B_{\text{threshold}} = 1.25$  for the NFMA, and  $B_{\text{threshold}} = 0.93$  for the Southern Fishery Management Area (SFMA). The  $B_{\text{targets}}$  established in the FMP are not revised by this action.

#### Setting Annual Target TACs and Associated Management Measures

In addition to revising the overfishing definition in the FMP, Framework 2 establishes an expedited process for setting target annual TACs. This action implements a TAC-setting method that is based on the relationship between the 3-year running average of the NMFS fall trawl survey biomass index (observed biomass index) and an established annual biomass index target. The annual index targets are based on 10 equal increments between the 1999 biomass index (the start of the rebuilding program) and the  $B_{\text{target}}$ , which is to be achieved by 2009 according to the rebuilding plan established in the FMP. Annual target TACs would be set based on the ratio of the observed biomass index to the annual index target applied

to the monkfish landings for the previous fishing year. Once the annual target TACs are established, trip limits and/or DAS will be adjusted accordingly, using a methodology established in this framework.

The Monkfish Monitoring Committee (MFMC) is currently required to meet on or before November 15 each year to review the status of the monkfish resource and develop TACs for the upcoming fishing year. If the results of the most recent NMFS fall trawl survey are available at that time, the MFMC will incorporate these results into the automatic method described in this framework to establish target TACs for the upcoming fishing year. Otherwise, the MFMC will be required to provide target TACs to the Councils and the Regional Administrator (RA) as soon as possible after the availability of the trawl survey indices, but no later than January 7 of the following year.

Under the target TAC-setting method contained in Framework 2, if the observed biomass index is below the annual index target, the target TAC will be set proportionally below the previous year's landings. If the observed biomass index is above the annual index target, the target TAC will be increased from the previous year's landings by one-half of the ratio of the biomass index to the index target, with certain limitations, as described below. In cases where  $F$  can be determined, the annual target TAC will always be set at a value that does not exceed  $F_{\text{threshold}}$  (currently estimated to be  $F=0.2$ ). For example, if  $F$  for the previous fishing year exceeded  $F_{\text{threshold}}$ , but a reduction in the target TAC is not required under the index-based method, the target TAC would be reduced proportionally from the previous year's landings, to end overfishing. When  $F$  cannot be determined and the observed biomass index is above the annual index target, the target TAC for the previous year will be increased by the method described above, but not by more than 20 percent of the previous year's landings.

Once the stock in a management area is rebuilt (i.e., the observed biomass index is at or above  $B_{\text{target}}$ ), the target TAC will be adjusted based on the ratio of current  $F$  to  $F_{\text{threshold}}$ , allowing for an increase in the target TAC if  $F$  is below  $F_{\text{threshold}}$ . This will set the OY target reference point at  $F_{\text{threshold}}$ . However, if  $F$  cannot be determined and the observed biomass index is above  $B_{\text{target}}$ , the target TAC will be set at no more than 20 percent above the previous year's landings.

In the situation where landings decline from the previous fishing year and the observed biomass index is

above the annual index target, the MFMC will review the circumstances surrounding the landings decline and recommend to the Councils a target TAC equivalent to either the previous year's landings or target TAC. The Councils, after considering the MFMC's recommendation, will recommend a target TAC to the RA regarding whether the target TAC should be set at the previous year's landings or at the target TAC. If the RA concurs with this recommendation, the target TAC and associated trip limits will be promulgated through rulemaking, consistent with the requirements of the Administrative Procedure Act (APA). Otherwise, the RA would notify the Councils in writing of his or her reasons for non-concurrence.

The intent of the Councils in establishing an expedited method for setting annual target TACs outside the Council framework adjustment process is to enable the RA to set future target TACs and associated management measures in a quicker, but predictable, manner, using the most recent information available. This expedited process for setting annual TACs will be accomplished consistent with the APA. The Framework 2 document also analyzes a range of target TAC alternatives for FY 2004. The intent of this analysis is to facilitate the expedited process for annual adjustments and to provide the public with ample notice of the possible impacts of such adjustments. The expedited annual adjustment process to be established in this framework would not preclude the Councils from initiating a framework adjustment at any time to implement other measures deemed necessary to meet the objectives of the FMP.

#### FY 2003 TACs and Possession Limits

Framework 2 establishes target TACs for FY 2003 of 10,211 mt in the SFMA and 17,708 mt in the NFMA. As a result, trip limits for monkfish limited access vessels in the SFMA will be increased from FY 2002 (May 1, 2002 - April 30, 2003) levels (550 lb (249.5 kg) tail weight per DAS for Category A and C vessels, and 450 lb (204.1 kg) tail weight per DAS for Category B and D vessels), to 1,250 lb (567 kg) tail weight per DAS for Category A and C vessels, and 1,000 lb (453.6 kg) tail weight per DAS for Category B and D vessels. The trip limits in the NFMA are unchanged by this action. In the NFMA, there is currently no trip limit for monkfish limited access vessels while fishing under either a monkfish or Northeast (NE) multispecies DAS. In addition, this action increases the incidental trip limit

for monkfish open-access Category E vessels fishing exclusively in the NFMA on a NE multispecies DAS from the lesser of 300 lb (136.1 kg) tail weight per DAS or 25 percent of the total weight of fish on board, to the lesser of 400 lb (181.4 kg) tail weight per DAS or 50 percent of total weight of fish on board.

#### Revision to the Area Declaration Regulations

Regulations implementing the FMP (64 FR 54732; October 7, 1999) specify that a vessel intending to fish for or catch monkfish under a monkfish DAS only in the NFMA must declare into the NFMA for a minimum of 30 days in order to fish under the less restrictive size and trip limits of this management area. However, the FMP also requires vessels fishing under a multispecies or scallop DAS to declare into the NFMA in order to fish under the less restrictive measures of this area. Because NMFS inadvertently referenced only limited access monkfish DAS vessels in the regulations implementing the FMP, Framework 2 corrects the area declaration provision by requiring vessels with limited access multispecies and scallop DAS permits, in addition to vessels possessing limited access monkfish DAS permits, to declare into the NFMA for a minimum of 30 days in order to fish under the less restrictive size and trip limits of this management area.

#### Revisions to Prohibitions

This action also clarifies the monkfish prohibitions found at 50 CFR 648.14(y) by providing appropriate cross-references to the monkfish regulations specified under 50 CFR part 648 subpart F.

#### Comments and Responses

Two public comments were received in support of Framework 2. An additional comment, from the NEFMC, raised two technical issues with respect to the proposed rule that are addressed in this final rule.

*Comment 1:* The first issue raised by the NEFMC concerns the preamble and regulatory language pertaining to  $F_{\text{threshold}}$ . In Framework 2, the Councils specifically adopted an  $F_{\text{threshold}}$  equivalent to  $F_{\text{max}}$ , which is currently estimated to be  $F=0.2$ . However, the preamble to the proposed rule and the proposed regulatory language at 50 CFR 648.96(b)(1)(ii)(B) state that  $F_{\text{threshold}}$  would be set equal to  $F_{\text{max}}=0.2$ , implying that the Councils adopted a fixed number for  $F_{\text{threshold}}$ . The Councils specifically adopted  $F_{\text{threshold}}=F_{\text{max}}$ , with the intent that  $F_{\text{threshold}}$  would change accordingly if a future Stock

Assessment Workshop recalculates the value of  $F_{\text{max}}$ , requiring no action by the Councils.

*Response:* NMFS acknowledges these oversights in the preamble to the proposed rule and the proposed regulatory text. The preamble to this final rule correctly references the Councils' intent with respect to  $F_{\text{threshold}}$ . In addition, the regulatory language at § 648.96(b)(1)(ii)(B) has been corrected in this final rule to reference that Framework 2 revises the  $F_{\text{threshold}}$  contained in the FMP to be equivalent to  $F_{\text{max}}$ , which is currently estimated to be  $F=0.2$ .

*Comment 2:* A second technical issue raised by the NEFMC concerns the timing of the MFMC's calculation of annual target TACs. The preamble to the proposed rule and the regulatory text at § 648.96(b)(1)(i) indicated a December 1 deadline for the MFMC to submit the target TACs to the Councils and the RA. This issue was not specifically discussed by the MFMC or the Councils, being administrative in nature. The NEFMC expressed concerns regarding the ability of the MFMC to consistently meet this deadline, particularly if there are delays in the fall trawl survey due to bad weather. The NEFMC suggested that NMFS revise this deadline to "as soon as possible after the availability of the trawl survey indices, but no later than January 7." The NEFMC noted that January 7 is consistent with the current deadline for submission of an annual framework adjustment that is recommended as a proposed rule.

*Response:* Although NMFS has some concerns with moving this deadline date to January 7 because it affords less review time by the agency, NMFS feels that the NEFMC's justification is reasonable. As a result, this final rule changes the deadline date for submission of annual target TACs by the MFMC from December 1 to "as soon as possible after the availability of the trawl survey indices, but no later than January 7."

#### Changes From the Proposed Rule

Three changes to the regulatory text in the proposed rule have been made. In § 648.9, paragraph (b)(1)(ii)(B) is revised to clearly reflect the intent of the Councils with respect to the adoption of a revised  $F_{\text{threshold}}$ , i.e., an  $F_{\text{threshold}}$  that is equivalent to  $F_{\text{max}}$ , not a specific  $F$  value. In § 648.96, paragraph (b)(1)(i) is revised to change the deadline date for submission of annual target TACs by the MFMC. This final rule changes the deadline date of December 1 contained in the proposed rule to be "as soon as possible after the availability of the trawl survey indices, but no later than

January 7," as recommended by the NEFMC. In § 648.96, paragraph (b)(2)(ii) is revised to more clearly describe the process by which trip limits would be set for the SFMA to achieve the proposed annual target TAC. This paragraph also incorporates a cross-reference to the analytical procedures outlined in Appendix II to Framework 2.

#### Classification

The RA, determined that Framework 2 is necessary for the conservation and management of the monkfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

For the reasons stated below, the Assistant Administrator for NOAA (AA) is waiving the 30-day delayed effectiveness period for the management measures contained in Framework 2 pursuant to 5 U.S.C. 553(d)(1). Default management measures scheduled to take effect on May 1, 2003, would eliminate the directed fishery, by allocating zero DAS. These default measures would also reduce incidental monkfish catch limits in other fisheries. However, the results of the most recent stock assessment (SAW 34) indicate that the default management measures scheduled to take effect on May 1, 2003, are unnecessary to achieve the goals of the FMP. Furthermore, the results of the 2002 NMFS fall trawl survey indicate that the monkfish stock in the NFMA is no longer overfished, and that monkfish stock biomass in the SFMA continues to increase, as it has over the past 2 years. The default measures would cause unnecessary, significant negative economic and social impacts to vessels and some communities dependent on the monkfish fishery, based on the findings of the Final Environmental Impact Statement for the FMP and the framework analyses. Moreover, delaying implementation of this rule beyond May 1, 2003, would likely result in increased monkfish bycatch as a result of the reduced incidental catch limits. Therefore, this rule relieves a restriction.

The Council prepared an environmental assessment (EA) for this framework and the AA concluded that there will be no significant impact on the human environment as a result of this rule. This action establishes an automatic method for setting annual TACs that is consistent with the stock rebuilding program in the FMP. As a result of increasing biomass in both management areas, this action increases the target TACs in both areas, resulting in an increase in the trip limits for limited access monkfish vessels fishing

in the SFMA, and an increase in the incidental trip limit for monkfish open-access Category E vessels fishing exclusively in the NFMA on a NE multispecies DAS. Because this action eliminates the default measures contained in the FMP and increases target TACs and trip limits in a manner that is consistent with the stock rebuilding goals of the FMP, this action will allow the continued economic viability of the monkfish fishery.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Pursuant to 5 U.S.C. 604(a) of the Regulatory Flexibility Act (RFA), NMFS prepared an FRFA for Framework 2, which incorporates the IRFA, any comments on the IRFA and the responses to those comments, and a summary of the analyses prepared in support of this final rule. A copy of the FRFA is available from the RA, and a copy of the IRFA is available from the NEFMC (*see ADDRESSES*). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here in its entirety. A summary of the FRFA is provided in the following paragraphs.

A description of the reasons why action by the agency is being taken and the objectives of this action are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain any reporting, recordkeeping, or other compliance requirements. This action is taken under the authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

#### Public Comments

Two public comments were received on the proposed rule; however, none of these comments pertained to the IRFA or the economic impacts of the proposed rule.

#### Number of Small Entities Impacted

This action could affect any commercial vessel holding an active Federal monkfish permit. However, the vessels most impacted by this action would be limited access monkfish permit holders. Data from the NE permit database show that there are approximately 714 limited access monkfish permit holders and approximately 1,900 open access monkfish permit holders. All of these vessels fall within the Small Business Administration's definition of "small business," and the RFA's definition of "small entity."

#### Minimizing Economic Impacts on Small Entities

The FRFA contains an analysis of the measures being implemented in comparison to other alternatives that were considered. Framework 2 contains six alternatives, including the no action and status quo alternatives. Each alternative contains a method for setting annual target TACs, and five of these alternatives include changes to the overfishing definition in the FMP. The measures being implemented in this final rule consist of the measures contained in the alternative recommended by both Councils.

Due to limited biological information on the monkfish resource, F cannot be reliably estimated at this time. As a result, three of the six alternatives contained in Framework 2 were rejected by both Councils because that they were contingent on the ability to reliably estimate F on an annual basis. The remaining three alternatives consist of an automatic means for setting annual target TACs. The alternative recommended by both Councils that is being implemented through this final rule is less precautionary than the other alternatives, but minimizes the overall impacts to small entities to the greatest extent. This action provides the Councils with the ability to increase the target TAC reflective of an increase in monkfish stock biomass in the absence of a reliable estimate of F, but with a cap on that increase. As a result, this action maximizes benefits to the fishing industry. Given the fact that the stock in the NFMA is no longer overfished, and that stock biomass in the SFMA has increased over the past 2 years, NMFS believes that it is appropriate to maximize benefits to the industry through an increase in the target TAC because the monkfish resource can withstand a modest increase in removals under the index-based target TAC setting method being implemented through this final rule.

The management measures contained in Framework 2 substantially increase the trip limits for limited access monkfish vessels fishing in the SFMA. Framework 2 increases the SFMA trip limits to 1,250 lb (567 kg) of tail weight per monkfish DAS for limited access Category A and C vessels, and 1,000 lb (453.6 kg) of tail weight per monkfish DAS for limited access Category B and D vessels. In addition, Framework 2 increases the incidental catch limit for open access (Category E) monkfish vessels while fishing under a NE multispecies DAS in the NFMA to the lesser of 400 lb (181.4 kg) of tail weight per DAS, or 50 percent of the total

weight of fish on board. An analysis of projected change in fishing performance under the proposed TACs and trip limits for FY 2003, as compared to FY 2002, indicates that the median vessel will realize a 23-percent increase in net returns on monkfish-only trips. According to this analysis, the change in net returns resulting from the proposed trip limit increase ranged from no change to an improvement of 78 percent. A limited access monkfish vessel would realize no change in net revenues under the proposed trip limit increase for the SFMA if the vessel did not fish at a level exceeding the trip limits established for FY 2002, which are approximately half the level of the proposed trip limits. With regard to the increase in the incidental catch limit in the NFMA, the analysis indicates that open access Category E vessels fishing in the NFMA will be generally unaffected by the proposed incidental catch limit increase since they land, on average, only about 20 percent of the current limit.

#### 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 holders of permits issued for the monkfish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the RA (*see ADDRESSES*) and area also available at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 22, 2003.

**Rebecca Lent,**

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

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

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

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

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

■ 2. In § 648.14, paragraphs (y) introductory text, (y)(1), (y)(4), (y)(6), (y)(9) through (y)(11), (y)(13), and (y)(17) through (y)(21) are revised to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(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:

(1) Fish for, possess, retain or land monkfish, unless:

(i) The monkfish are being fished for, or were harvested, in or from the EEZ by a vessel issued a valid monkfish permit under § 648.4(a)(9); or

(ii) The monkfish were harvested by a vessel not issued a Federal monkfish permit that fishes for or possesses monkfish exclusively in state waters; or

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

\* \* \* \* \*

(4) Operate or act as an operator of a vessel fishing for, possessing, retaining, or landing monkfish in or from the EEZ without having been issued and possessing a valid operator permit pursuant to § 648.5, and this permit is onboard the vessel.

\* \* \* \* \*

(6) Violate any provision of the monkfish incidental catch permit restrictions as provided in §§ 648.4(a)(9)(ii) or 648.94(c).

\* \* \* \* \*

(9) Fail to comply with the monkfish size limit restrictions of § 648.93 when issued a valid monkfish permit under § 648.4(a)(9).

(10) Fail to comply with the monkfish possession limits and landing restrictions, including liver landing restrictions, specified under § 648.94 when issued a valid monkfish permit under § 648.4(a)(9).

(11) Fail to comply with the monkfish DAS provisions specified at § 648.92 when issued a valid limited access monkfish permit, and fishing for, possessing, or landing monkfish in excess of the incidental catch limits specified at § 648.94 (c).

\* \* \* \* \*

(13) Combine, transfer, or consolidate monkfish DAS allocations.

\* \* \* \* \*

(17) If the vessel has been issued a valid limited access monkfish permit, and fishes under a monkfish DAS, fail

to comply with gillnet requirements and restrictions specified in § 648.92(b)(8).

(18) Fail to produce gillnet tags when requested by an authorized officer.

(19) Tagging a gillnet with or otherwise using or possessing a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel, or using or possessing a false gillnet tag.

(20) Selling, transferring, or giving away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

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

\* \* \* \* \*

■ 3. In § 648.92, paragraph (b)(1) is revised to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) *Limited access monkfish permit holders.* All limited access monkfish permit holders shall be allocated 40 monkfish DAS for each fishing year, unless modified according to the provisions specified at § 648.96(b)(3). Limited access multispecies and limited access scallop permit holders who also possess a valid limited access monkfish permit must use a multispecies or scallop DAS concurrently with their monkfish DAS, except as provided in paragraph (b)(2) of this section.

\* \* \* \* \*

■ 4. In § 648.93, the introductory heading for paragraph (a), and paragraphs (a)(1) and (b) are revised to read as follows:

**§ 648.93 Monkfish minimum fish sizes.**

(a) *General provisions.* (1) All monkfish caught by vessels issued a valid Federal monkfish permit must meet the minimum fish size requirements established in this section.

\* \* \* \* \*

(b) *Minimum fish sizes.* (1) The minimum fish size for vessels fishing in the SFMA, or for vessels not declared into the NFMA as specified in paragraph (b)(2) of this section, is 21 inches (53.3 cm) total length/14 inches (35.6 cm) tail length.

(2) *Vessels fishing exclusively in the NFMA.* The minimum fish size for vessels fishing exclusively in the NFMA is 17 inches (43.2 cm) total length/11 inches (27.9 cm) tail length. In order for this size limit to be applicable, a vessel intending to fish for monkfish under a

scallop, multispecies, or monkfish DAS exclusively in the NFMA must declare into the NFMA for a period of not less than 30 days, pursuant to the provisions specified at § 648.94(f). A vessel that has not declared into the NFMA under § 648.94(f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provisions described in § 648.94(e), and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

■ 5. In § 648.94, paragraph (b)(7) is removed and reserved; and paragraphs (b)(1), (b)(2), introductory heading of paragraph (b)(3), and paragraphs (b)(4) through (b)(6), (c)(1)(i), (c)(2), (c)(3)(i) and (f) are revised to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) *Vessels fishing under the monkfish DAS program in the NFMA.* There is no monkfish trip limit for vessels issued a limited access Category A, B, C, or D permit that are fishing under a monkfish DAS exclusively in the NFMA.

(2) *Vessels fishing under the monkfish DAS program in the SFMA.*—(i) *Category A and C vessels.* Category A and C vessels fishing under the monkfish DAS program in the SFMA may land up to 1,250 lb (567 kg) tail-weight or 4,150 lb (1,882 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 and D vessels.* Category B and D vessels fishing under the monkfish DAS program in the SFMA may land up to 1,000 lb (454 kg) tail-weight or 3,320 lb (1,506 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) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(2)(i) and (ii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(3) *Category C and D vessels fishing under the multispecies DAS program.*

\* \* \* \* \*

(4) *Category C and D vessels fishing under the scallop DAS program.* A

Category C or D 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). All monkfish permitted vessels are prohibited from fishing for, landing, or possessing monkfish while in possession of dredge gear unless fishing under a scallop DAS.

(5) *Category C and D scallop vessels declared into the monkfish DAS program without a dredge on board, or not under the net exemption provision.* Category C and D vessels that have declared into the monkfish DAS program and that do not fish with or have a dredge on board, or 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. 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 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 paragraph (c)(3) of this section.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) *NFMA.* Vessels issued a monkfish incidental catch permit fishing under a 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 purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

\* \* \* \* \*

(2) *Scallop dredge vessels fishing under a scallop DAS.* A scallop dredge

vessel issued a monkfish incidental catch 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) \* \* \*

(i) *Vessels fishing with large mesh.* A vessel issued a valid monkfish incidental catch permit and fishing in the GOM, GB, SNE, or MA RMAs with mesh no smaller than specified at § 648.80(a)(3)(i), (a)(4)(i), (b)(2)(i), and § 648.104(a)(1), respectively, while not on a monkfish, 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 purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

\* \* \* \* \*

(f) *Area declaration requirement for vessels fishing exclusively in the NFMA.* Vessels fishing under a multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish for monkfish exclusively in the NFMA and declare into the NFMA for a period of not less than 30 days by obtaining a letter of authorization from the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph (f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provisions described in § 648.94(e), and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

\* \* \* \* \*

■ 6. In § 648.96, the section heading and paragraphs (a), (b) and (c) are revised to read as follows:

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

(a) *General.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to

develop target TACs for the upcoming fishing year in accordance with paragraph (b)(1) of this section, and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, or other measures necessary to achieve the Monkfish FMP's goals and objectives. The MFMC shall review available data pertaining to discards and landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

(b) *Annual Adjustment Procedures.*—(1) *Setting annual target TACs.* (i) The MFMC shall submit to the Councils and Regional Administrator the target monkfish TACs for the upcoming fishing year as soon as possible after the availability of the NMFS fall trawl survey indices, but no later than January 7, based on the control rule formula described in paragraph (b)(1)(ii) of this section. The Regional Administrator shall then promulgate any changes to existing management measures, pursuant to the methods specified in paragraphs (b)(2) and (3) of this section, resulting from the updated target TAC through rulemaking consistent with the Administrative Procedure Act. If the annual target TAC generated through the control rule formula described in paragraph (b)(1)(ii) of this section does not require any changes to existing management measures, then no action shall be required by the Regional Administrator. If the action is submitted after January 7, then the target TACs and associated management measures for the prior fishing year shall remain in place until new target TACs are implemented.

(ii) *Control rule method for setting annual targets TACs.* The current 3-year running average of the NMFS fall trawl survey index of monkfish biomass shall be compared to the established annual biomass index target, and target annual TACs will be set in accordance with paragraphs (b)(1)(ii)(A) - (F) of this section. The annual biomass index targets established in Framework Adjustment 2 to the FMP are provided in the following table (kg/tow).

	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2007	FY 2008	FY 2009
NFMA .....	1.33	1.49	1.66	1.83	2.00	2.16	2.33	2.50
SFMA .....	0.88	1.02	1.15	1.29	1.43	1.57	1.71	1.85

(A) Unless the provisions of paragraphs (b)(1)(ii)(C) or (D) of this section apply, if the current 3-year running average of the NMFS fall trawl survey biomass index is below the annual index target, the target TAC for the subsequent fishing year shall be set equivalent to the monkfish landings for the previous fishing year, minus the percentage difference between the 3-year average biomass index and the annual index target.

(B) If the 3-year running average of the NMFS fall trawl survey biomass index is above the annual index target, and the current estimate of  $F$  is below  $F_{\text{threshold}} = F_{\text{max}}$ , the target TAC for the subsequent fishing year shall be set equivalent to the previous year's landings, plus one-half the percentage difference between the 3-year average biomass index and the annual index target, but not to exceed an amount calculated to generate an  $F$  in excess of  $F_{\text{threshold}}$ . If current  $F$  cannot be determined, the target TAC shall be set at not more than 20 percent above the previous year's landings.

(C) If the current estimate of  $F$  exceeds  $F_{\text{threshold}}$ , the target TAC shall be reduced proportionally to stop overfishing, even if a reduction is not called for based on biomass index status as described in paragraph (b)(1)(ii)(A) of this section. For example, if  $F = 0.24$ , and  $F_{\text{threshold}} = 0.2$ , then the target TAC shall be reduced to 20 percent below the previous year's landings.

(D) If the 3-year average biomass index is below the annual index target, and  $F$  is above  $F_{\text{threshold}}$ , the method ( $F$ -based or biomass index based) that results in the greater reduction from the previous year's landings shall determine the target TAC for the subsequent fishing year.

(E) If the observed index is above the 2009 index targets, the target TAC for the subsequent fishing year shall be based on the ratio of current  $F$  to  $F = 0.2$ , applied to the previous year's landings. If current  $F$  cannot be determined, the target TAC shall be set at not more than 20 percent above previous year's landings.

(F) If landings decline from the previous year and the current 3-year average biomass index is above the annual index target, whether or not  $F$  can be determined, the MFMC shall include in its report, prepared under paragraph (a) of this section, after taking into account circumstances surrounding the landings decline, a recommendation to the Councils on whether the target TAC should be set at the previous year's landings or previous year's target TAC. The Councils shall consider the MFMC recommendation, and then recommend

to the Regional Administrator whether the target TAC should be set at the previous year's landings or previous year's target TAC. If such a recommendation is made, the Regional Administrator must decide whether to promulgate measures consistent with the recommendation as provided for in paragraph (b)(4) of this section.

(2) *Setting trip limits for the SFMA.* (i) Under the method described in paragraph (b)(1)(ii) of this section, if the SFMA target TAC is set at 8,000 mt or higher, the Regional Administrator shall adjust the trip limits according to the method described in paragraph (b)(2)(ii) of this section.

(ii) *Trip limit analysis procedures.* Trip limits shall be determined annually by the process specified in Appendix II of Framework Adjustment 2 to the Monkfish FMP, using information from the mandatory fishing vessel trip reports (FVTR). This process is summarized in paragraphs (b)(2)(ii) (A) through (C) of this section.

(A) The 1999 fishing year shall be used as the baseline year for this analysis, since it represents monkfish landings under relatively unconstrained conditions. The first step shall be to calculate the expected distribution of monkfish landings from the SFMA by permit category group (A and C, and B and D) under the proposed target TAC for the SFMA for the upcoming fishing year. This calculation shall be based on the distribution of monkfish landings for the most recent fishing year for which there is complete FVTR information (most recent fishing year). For example, for each permit category group, the distribution of landings under the proposed target SFMA TAC for the 2004 fishing year would be based on the distribution of landings from the SFMA for the 2002 fishing year, the most recent fishing year for which complete FVTR would be available.

(B) The second step shall be to compare the monkfish landings for the SFMA from the baseline year, assuming a trip limit was in place that is identical to the trip limit in the most recent fishing year, to the monkfish landings for the most recent fishing year, and to calculate a ratio estimator for each permit category group. This ratio shall then be multiplied by the trip level monkfish landings from the SFMA for the baseline year for each permit category group to simulate the monkfish landings that would have occurred during the most recent fishing year under an unconstrained landings-per-DAS limit. For example, the ratio calculated by comparing the SFMA monkfish landings by permit category group for the 1999 fishing year to the

most recent fishing year, fishing year 2002, would be applied to the SFMA trip level monkfish landings for the 1999 fishing year to produce estimated trip level monkfish landings for the 2002 fishing year under an unconstrained landings-per-DAS limit.

(C) Using the estimated trip level monkfish landings for the most recent fishing year, expected monkfish landings under a range of potential trip limits shall be calculated for each permit category group for the upcoming fishing year as follows: Trips that landed monkfish from the SFMA in excess of a particular potential trip limit shall have monkfish landings reduced to that trip limit, and trips that landed monkfish from the SFMA in an amount equal to or lower than that particular trip limit shall remain at the actual amount of monkfish landed. Expected monkfish landings under each potential trip limit shall then be calculated for each permit category group by summing the adjusted monkfish landings of all trips that exceeded the potential trip limit and the monkfish landings of all trips that did not exceed the potential trip limit. The resulting data shall then be used to determine a functional relationship between potential trip limits and expected monkfish landings for each permit category group. These empirical functions shall then be used to calculate a landing-per-DAS limit for each permit category group for the upcoming fishing year, based on the expected distribution of monkfish landings by permit category group for the upcoming fishing year, as calculated under paragraph (b)(2)(ii)(A) of this section.

(3) *Setting DAS allocations for the SFMA.* Under the method described in paragraph (b)(1)(ii) of this section, if the SFMA target TAC is set below 8,000 mt, the Regional Administrator shall set the trip limits as specified in paragraphs (b)(3)(i) and (ii) of this section, and adjust the DAS allocations according to the method described in paragraph (b)(3)(iii) of this section.

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

(ii) *Category B and D vessels.* Category B and D 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 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).

(iii) *DAS analysis.* This procedure involves setting a maximum DAS usage for all permit holders of 40 DAS; proportionally adjusting the landings to a given DAS value based on the trip limits specified under paragraphs (b)(3)(i) and (ii) of this section; and adjusting the landings according to the same methodology used in the trip limit analysis described in paragraph (b)(2)(ii) of this section.

(A) Because limited access monkfish permit holders are allowed to carry over up to 10 DAS from the previous fishing year to the current fishing year, adjustments to DAS usage shall be made by first reducing the landings for all permit holders who used more than 40 DAS by the proportion of DAS exceeding 40, and then resetting the upper limit of DAS usage to 40.

(B) The expected landings at the adjusted DAS shall be calculated by adding the landings of all permit holders who used less than the proposed DAS limit to the landings of those who used more than the proposed DAS limit, where landings are reduced by the proportion of the proposed DAS limit to the actual DAS used by vessels during the baseline fishing year, 1999.

(C) Landings shall be prorated between permit categories in the same manner used in the trip limit analysis procedures described under paragraph (b)(2)(iii) of this section.

(4) *Council TAC recommendations.* As described in paragraph (b)(1)(ii)(F) of this section, if the Councils recommend a target TAC to the Regional Administrator, and the Regional Administrator concurs with this recommendation, the Regional Administrator shall promulgate the target TAC and associated management measures through rulemaking consistent with the APA. If the Regional Administrator does not concur with the Councils' recommendation, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(c) *Annual and in-season framework adjustments to management measures.*—(1) *Annual framework process.* (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; and other frameworkable measures included in § 648.55 and 648.90.

(ii) The Councils shall review the options developed by the MFMC and other relevant information, consider public comment, and submit a recommendation to the Regional Administrator that meets the Monkfish FMP's objectives, consistent with other applicable law. The Councils' recommendation to the Regional Administrator shall include supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Councils. Management adjustments made to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(A) The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options developed by the MFMC. The oversight committee would review the options developed by the MFMC and any other relevant information, consider public comment, and make a recommendation to the Councils.

(B) If the Councils do not submit a recommendation that meets the Monkfish FMP's goals and objectives, and that is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MFMC, unless rejected by either Council, provided such option meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law. If either the NEFMC or MAFMC has rejected all options, then the Regional Administrator may select any measure that has not been rejected by both Councils.

(iii) If the Councils submit, on or before January 7 of each year, a recommendation to the Regional Administrator after one framework

meeting, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the **Federal Register** as a proposed rule. The **Federal Register** notification of the proposed action shall provide a public comment period in accordance with the Administrative Procedure Act. The Councils may instead submit their recommendation on or before February 1, if they choose to follow the framework process outlined in paragraph (c)(3) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs that the Councils' recommendation meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action shall be published as a final rule in the **Federal Register**. If the Regional Administrator concurs that the recommendation meets the Monkfish FMP's goals and objectives, is consistent with other applicable law, and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year, fishing may continue. However, DAS used by a vessel on or after the start of a fishing year shall be counted against any DAS allocation the vessel ultimately receives for that year.

(iv) Following publication of a proposed rule and after receiving public comment, if the Regional Administrator concurs in the Councils' recommendation, a final rule will be published in the **Federal Register** prior to the start of the next fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the goals and objectives of the Monkfish FMP, the Regional Administrator may publish as a proposed rule one of the MFMC options reviewed and not rejected by either Council, provided the option meets the goals and objectives of the Monkfish FMP, and is consistent with other applicable law.

(2) *In-season Action.* At any time, the Councils or the Joint Monkfish Oversight Committee (subject to the approval of the Councils' Chairmen) may initiate action to add or adjust management measures, if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP. Recommended adjustments to management measures must come from the categories specified under paragraph (c)(1)(i) of this section. In addition, the



procedures for framework adjustments specified under paragraph (c)(3) of this section must be followed.

(3) *Framework Adjustment Procedures.* Framework adjustments shall require at least one initial meeting of the Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two Council meetings, one at each Council. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to the first of the two final Council meetings. Framework adjustments and amendments to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(i) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four factors and provide support and analysis for each factor considered:

(A) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(B) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(C) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(D) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(ii) *Action by NMFS.* (A) If the Regional Administrator approves the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3)(i) of this section, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for

public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of the recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(B) If the Regional Administrator concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the **Federal Register**.

(C) If the Regional Administrator does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(iii) *Adjustments for gear conflicts.* The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(d) and (e).

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 030210027-3097-02; I.D. 012103E]

RIN 0648- AQ35

### 50 CFR Part 648

### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 37 to the Northeast Multispecies Fishery Management Plan

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement measures contained in Framework Adjustment 37 (Framework 37) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) to eliminate the Year 4 default measure for whiting in both stock areas; reinstate the Cultivator Shoal whiting fishery (CSWF) season through October 31 each year; eliminate the 10-percent restriction on red hake incidental catch in the CSWF;

adjust the incidental catch allowances in Small Mesh Areas 1 and 2 so that they are consistent with those in the Cape Cod Bay raised footrope trawl fishery; clarify the transfer-at-sea provisions for small-mesh multispecies for use as bait; modify slightly the Cape Cod Bay raised footrope trawl fishery area; and retain the 30,000-lb (13.6-mt) trip limit for the CSWF.

**DATES:** Effective May 1, 2003.

**ADDRESSES:** Copies of the Framework 37 document, its Regulatory Impact Review (RIR), the Environmental Assessment and other supporting documents for the framework adjustment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

This action is also based upon analyses conducted in support of Amendment 12 to the FMP. Copies of the Amendment 12 document, its RIR, IRFA and the July 1, 1999, supplement to the IRFA prepared by NMFS, the Final Supplemental Environmental Impact Statement, and other supporting documents for Amendment 12 are available from Paul J. Howard (See address above). The Final Regulatory Flexibility Analysis (FRFA) for Amendment 12 consisted of the IRFA, public comments and responses contained in the final rule implementing Amendment 12 (65 FR 16766, March 29, 2000), and the summary of impacts and alternatives in that final rule.

**FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, Fishery Policy Analyst, 978-281-9272.

**SUPPLEMENTARY INFORMATION:** This final rule implements measures contained in Framework 37 to the FMP. Details concerning the justification for and development of Framework 37 and the implementing regulations were provided in the preamble to the proposed rule (68 FR 8731, February 25, 2003) and are not repeated here.

This framework adjustment eliminates the Year 4 default measure in both whiting stock areas and implements adjustments to allow for moderate increases in effort on small-mesh multispecies in the northern stock area. This adjustment is necessary because current regulations specify that the Year 4 default measure will become effective in both stock areas on May 1, 2003, unless modified or eliminated by a New England Fishery Management Council (Council) action.

This final rule also reinstates the CSWF season through October 31 each