

vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer.

#### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

**Dated:** September 4, 2008.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 080627793-81063-02]

**RIN 0648-AW81**

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Framework Adjustment 6 to the Monkfish Fishery Management Plan

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

**ACTION:** Final rule.

**SUMMARY:** NMFS approves and implements new management measures for the monkfish fishery recommended in Framework Adjustment 6 (Framework 6) to the Monkfish Fishery Management Plan (FMP), which has been submitted jointly by the New England (NEFMC) and Mid-Atlantic Fishery Management Councils (Councils). This action eliminates the backstop provision adopted in Framework Adjustment 4 (Framework 4) to the FMP, which was implemented in October 2007. This provision would have adjusted, and possibly closed, the directed monkfish fishery in fishing year (FY) 2009 if the landings in FY 2007 exceeded the target total allowable catch (TTAC) by more than 30 percent. Given that both stocks are rebuilt according to the most recent assessment, the backstop provision is no longer deemed necessary.

**DATES:** This rule is effective October 10, 2008.

**ADDRESSES:** Copies of the Environmental Assessment (EA),

including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), prepared for Framework 6 are available upon request from Paul Howard, Executive Director, NEFMC, 50 Water Street, Newburyport, MA, 01950. The document is also available online at [www.nefmc.org](http://www.nefmc.org). NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. The FRFA consists of the IRFA, public comments and responses contained in this final rule, and a summary of impacts and alternatives contained in this final rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 2298, and on the Northeast Regional Office's website at <http://www.nero.noaa.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Emily Bryant, Fishery Management Specialist, phone (978) 281-9244, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The monkfish fishery is jointly managed by the Councils, with the NEFMC having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA).

Framework 6 eliminates the backstop provision adopted in Framework 4. This backstop provision would have adjusted, and possibly closed, the directed monkfish fishery in 2009 if the landings in FY 2007 exceeded the TTAC by more than 30 percent. When Framework 4 was implemented, the biological reference points indicated that monkfish stocks were overfished and overfishing was occurring. In July 2007, the Northeast Data Poor Stocks Working Group (DPWG) completed and accepted a new stock assessment that indicated neither stock is overfished, overfishing is no longer occurring, and both stocks are rebuilt based on a new modeling approach and newly recommended biomass reference points. Framework Adjustment 5, implemented in May 2008, adopted the revised reference points recommended by the DPWG and implemented other measures that will reduce the likelihood of TTAC overages in FY 2008 and beyond. Therefore, a stock rebuilding program for the monkfish fishery is no longer necessary, nor is the backstop provision.

For a complete discussion of Framework 6, refer to the preamble of the proposed rule for this action (73 FR 39643; July 10, 2008).

#### Technical Change to Monkfish FMP Regulations

This rule would have corrected the regulations implementing the FMP, but the regulatory text for the backstop provision has already been removed from the regulations. The final rule implementing the Standardized Bycatch Recording Methodology (SBRM) Omnibus Amendment (73 FR 4736, January 28, 2008) inadvertently revised § 648.96(b)(5) by deleting the majority of regulations pertaining to the backstop provision introduced by Framework 4. In addition, the SBRM adjustment to the monkfish regulations added text referencing the annual review process at § 648.96(b)(5), which is now redundant with the existing text under § 648.96(a). Therefore, this action codifies the prior inadvertent removal of the backstop regulations and removes the redundant text under § 648.96(b)(5) referencing the annual review process. This action also adjusts § 648.96(b)(6) for the purpose of removing the only remaining reference to the TTAC overage backstop provision that was added through the final rule implementing Framework 4.

#### Comments and Responses

The public comment period on the proposed rule ended on August 11, 2008, with three comments received from private individuals and one comment from the State of Maine Department of Marine Resources.

**Comment 1:** One commenter generally opposed the removal of the backstop provision but did not provide any specific comments that are relevant to this action.

**Response:** There is no scientific or legal basis for the commenter's statements as monkfish are not currently subject to overfishing, nor in an overfished condition, based on the best scientific information available. Additionally, since both stocks are rebuilt, there is no longer a stock rebuilding program for monkfish. As such, the backstop provision is no longer necessary.

**Comment 2:** One commenter supported the removal of the backstop provision, mentioning the economic impact on monkfish fishermen if the provision were retained.

**Response:** NMFS acknowledges the commenter's support of this measure and is aware of the economic impacts that would occur if the backstop provision had been implemented.

Comment 3: Two commenters supported the removal of the backstop provision because of the new stock assessment model results.

*Response:* NMFS acknowledges the commenters' support of this measure and agrees that this measure is no longer necessary, given current monkfish stock status.

#### Classification

The Administrator, Northeast Region, NMFS, determined that Framework 6 is necessary for the conservation and management of the monkfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The FRFA prepared pursuant to 5 U.S.C. 604(a) is included in this final rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments, and a summary of the analyses completed to support the action. The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here. A copy of the EA/RIR/IRFA is available from the Council (see ADDRESSES).

#### Final Regulatory Flexibility Analysis

##### *Statement of Objective and Need*

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are contained in the preambles to the proposed rule and this final rule and are not repeated here.

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

Four comments were submitted on the proposed rule, but none were specific to the IRFA. However, one commenter mentioned the economic effects of the rule. NMFS has responded to this comment in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of that comment, which supported the rule.

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

The Small Business Administration (SBA) defines small businesses in the commercial fishing and recreational fishing sectors as firms with receipts (gross revenues) of up to \$4.0 million and \$6.5 million, respectively. No large entities participate in this fishery, as

defined in section 601 of the RFA. Therefore, there are no disproportionate impacts between large and small entities. This action would only affect limited access monkfish vessels that fish in the SFMA. As of March 14, 2008, there were 765 limited access monkfish permits. Based on FY 2006 Vessel Trip Report records, 462 limited access permit holders fished in the SFMA.

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

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule. This rule does not duplicate, overlap, or conflict with other Federal rules.

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

The backstop provision was implemented when there were concerns regarding potential overfishing of monkfish as the FMP neared the end of its rebuilding period. Changes in the biological reference points under Framework 5 showed that monkfish are no longer overfished, and overfishing is not occurring. In addition, current population modeling indicates that TTAC overage levels of 30 percent would not change the monkfish stock status. In the absence of this action, the directed monkfish fishery would close in the SFMA in FY 2009, based upon landings in FY 2007 indicating that the TTAC for this area was exceeded by 41 percent. Retaining the existing effort reduction measures for FY 2009, under the no action alternative, would have a negative economic impact on small entities, without materially aiding in the rebuilding of the stock. Conversely, under this action, restrictions on effort will not be required in FY 2009, thus avoiding a negative economic impact on small entities participating in the fishery. No other alternatives were considered because the purpose of the action is to remove a measure deemed unnecessary based upon best scientific information available. Using a trip model, it was estimated that the proposed measure would result in positive or neutral changes in vessel net revenues, crew payments, and monkfish revenues in FY 2009, compared to taking no action, depending on whether or not a vessel fished in the SFMA. An approximate increase of 380 percent in monkfish net revenues was estimated for vessels that fish exclusively in the SFMA. Thus, the proposed action minimizes the economic impacts to small entities by implementing a

measure that would avoid any unnecessary economic effects.

#### *Small Entity Compliance Guide*

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

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 4, 2008.

**Samuel D. Rauch III,**

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

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

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

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

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

■ 2. In § 648.96, paragraph (b)(5) is removed and reserved, and paragraph (b)(6) is revised to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(6) *Management measures for FY 2010 and beyond.* If a regulatory action is not implemented to establish management measures for the monkfish fishery for FY 2010 or subsequent years, the management measures in effect during FY 2009 (i.e., trip limits and DAS allocations) shall remain in effect.

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