

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 648**

[Docket No. 981223319-9167-02; I.D. 112598B]

RIN 0648-AJ44

Fisheries of the Northeastern United States; Northeast Multispecies and Monkfish Fisheries; Monkfish 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 approved measures contained in the Monkfish Fishery Management Plan (FMP). These regulations implement the following measures: Establishment of two monkfish management areas; target total allowable catch levels (TACs); limited access; effort limits through days-at-sea (DAS) allocations; trip limits and incidental harvest allowances; minimum size and mesh limits; gear restrictions; spawning season closures; a framework adjustment process; permitting and reporting requirements; and other measures for administration and enforcement. The intended effect of this rule is to stop overfishing and rebuild the monkfish stock. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule and publishes the OMB control numbers for these collections.

DATES: This rule is effective November 8, 1999.

ADDRESSES: Copies of the FMP, its Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council (NEFMC), Suntaug Office Park, 5 Broadway (US Rte. 1), Saugus, MA 01906-1036.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of

Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

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

SUPPLEMENTARY INFORMATION: This final rule implements the measures contained in the Monkfish FMP, which were approved by NMFS on behalf of the Secretary of Commerce (Secretary) on March 3, 1999. All of the measures contained in the Monkfish FMP but one, the "running clock" provision, as originally submitted, were approved by NMFS on behalf of the Secretary. A proposed rule to implement these measures was published on February 16, 1999 (64 FR 7601). NMFS disapproved the running clock provision because it believes that the measure fails to meet national standard 7 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) with regard to minimizing costs. This provision would have placed an incremental burden on the administration and enforcement of this measure. Additionally, the provision could have conflicted with multispecies vessels also on a cod running clock. Instances could have occurred where a vessel called out with overages in both fisheries, or in one and not in the other, thereby creating an administratively burdensome and confusing program.

Details concerning the justification for and development of the Monkfish FMP and the implementing regulations were provided in the notice of availability (NOA) of a Monkfish FMP (63 FR 66524, December 2, 1998) and in the preamble to the proposed rule (64 FR 7601, February 16, 1999) and are not repeated here.

Approved Measures*Two Management Areas*

The FMP divides the Northeast monkfish fishery into two management areas separated by a line that roughly runs along Georges Bank from Cape Cod, MA, to the Hague Line. One is the Northern Fishery Management Area (NFMA) and the other is the Southern Fishery Management Area (SFMA).

Total Allowable Catch

The FMP establishes a procedure for setting annual target TAC levels for monkfish, with the exception of target TACs for the fishing year beginning May 1, 1999, which are established by this rule. The target TACs will be based on the best available scientific information and will provide a measure by which to evaluate the effectiveness of the

management program and to make annual determinations on the need for adjustments to this program. During the first fishing year beginning May 1, 1999, the annual target TACs are set at 5,673 mt (12,506,614 lb) and 6,024 mt (13,280,423 lb) in the NFMA and the SFMA. The target TAC levels will be set or adjusted so as to attain a fishing mortality rate of 0.07 in the NFMA and of 0.26 in the SFMA for the 1999, 2000, and 2001 fishing years. Beginning with the 2002 fishing year, the target TACs will be set so as to halt overfishing in 2002 and allow rebuilding to the stock biomass targets from fishing years 2002 to 2009.

Qualification Criteria for Limited Access

Vessels qualify for monkfish limited access based on a vessel's, or a replaced vessel's, historic participation from February 28, 1991, to February 27, 1995 (the monkfish control date).

Subject to certain restrictions set forth in this rule, a vessel qualifies for a limited access monkfish permit if the vessel landed $\geq 50,000$ lb (22,680 kg) tail-weight or 166,000 lb (75,298 kg) whole-weight during the qualification period. Vessels that do not have multispecies or scallop limited access permits and qualify according to this criterion will receive a "Category A" monkfish limited access permit. Vessels that have a multispecies or scallop limited access permit and qualify according to this criterion will receive a "Category C" monkfish limited access permit. (Note: The fisheries for Atlantic scallops and Northeast multispecies are governed by 50 CFR part 648—Fisheries of the Northeastern United States, Subparts D and F, respectively. The limited access fisheries for scallops and Northeast multispecies are closed to new entrants.) All vessels not qualifying for a Category A or C permit that are less than 51 gross registered tons (GRT) and vessels of any size that have a multispecies DAS permit will qualify for a limited access monkfish permit if the vessel landed $\geq 7,500$ lb (3,402 kg) tail-weight or 24,900 lb (11,295 kg) whole-weight during the qualification period. Vessels without a multispecies or scallop limited access permit that qualify according to this criterion will receive a "Category B" monkfish limited access permit. Vessels with a multispecies or scallop limited access permit that qualify according to this criterion will receive a "Category D" monkfish limited access permit. (See Table 2 to the Preamble.)

Permitting and Reporting Requirements

Vessels that catch monkfish must have either a limited access monkfish

permit (category A, B, C, or D) or a monkfish incidental catch permit to fish for, possess, retain or land monkfish. (See Table 2.) Vessel owners must also submit Vessel Trip Reports. Vessels with a limited access monkfish permit must call in and out of the monkfish DAS program when participating in the

monkfish fishery. Dealers that land monkfish must apply for a Dealer Permit and submit landings reports.

Allocations of Monkfish DAS

The DAS allocations for limited access monkfish permit holders are shown in the following table. Forty (40)

DAS are allocated to limited access permitted vessels on November 8, 1999 (Year 1) and at the beginning of Years 2 and 3. In Year 4 monkfish DAS will be set to zero (0), unless other action is taken by the Councils and implemented by NMFS. (See Table 1 to the Preamble.)

Table 1. Monkfish Fishing Year and Maximum Annual DAS Allocations

Fishing Year ¹	Maximum Annual DAS Allocation:
November 8, 1999 - April 30, 2000	40
May 1, 2000 - April 30, 2001	40
May 1, 2001 - April 30, 2002	40
May 1, 2002 - April 30, 2003 and subsequent fishing years	0

¹ For the first year of implementation of the FMP, 40 DAS will be allocated to limited access permitted vessels beginning on November 8, 1999. Beginning in year 2 and subsequent years, DAS will be allocated for the monkfish fishing year (May 1 - April 30).

² Reserved

Any vessel may carry over a maximum of 10 unused monkfish DAS to the following fishing year's allocation (including beyond May 1, 2002). Unused monkfish DAS may not be carried over beyond the year following the one in which they were unused.

While a multispecies and scallop vessel that qualifies for a monkfish limited access permit (Categories C or D)

receives the same number of monkfish DAS as allocated to other permit categories, up to a maximum of 40 DAS, when such a vessel fishes under the monkfish DAS program, the trip also counts against a multispecies or scallop DAS, whichever is applicable. A combination vessel that holds both a multispecies and a scallop permit may

fish under a monkfish DAS during either a multispecies or scallop DAS, provided that unused multispecies or scallop DAS are available. Such a vessel must declare whether to count DAS against the multispecies or scallop DAS at the time it calls into the monkfish DAS program. (See Table 2 to the Preamble.)

Table 2—Monkfish permit categories, qualification criteria for permit categories, and DAS allocations for vessels on a monkfish DAS

Permit Category	Qualification Criteria ¹ for Permit Categories (landed weight expressed in pounds)	DAS Allocation ²
A	Vessels that do not possess a multispecies or scallop limited access permit must have landed $\geq 50,000$ lb tail-weight or 166,000 lb whole weight of monkfish during the qualifying period..	40 DAS
B	Vessels less than 51 GRT that do not possess a multispecies or scallop limited access permit and do not qualify for a Category A Permit must have landed monkfish $\geq 7,500$ lb tail-weight or 24,900 lb whole weight of monkfish during the qualifying period..	40 DAS
C	Vessels that possess a multispecies or scallop limited access permit must meet landing criteria as required for Permit Category A..	Up to 40 DAS & vessel must also be on a multispecies or scallop DAS
D	Vessels that possess a multispecies limited access permit and vessels less than 51 GRT that possess a scallop limited access permit that do not qualify for a Category C Permit must meet landing criteria as required for Permit Category B..	Up to 40 DAS & vessel must also be on a multispecies or scallop DAS

¹ Vessel must have landed monkfish during qualifying period, i.e., February 28, 1991, through February 27, 1995, in the amounts indicated.

² DAS allocations indicated are for fishing years 1999, 2000, and 2001. For fishing years 2002 and thereafter, monkfish DAS will be set to zero (0), unless other action is taken by the NEFMC and MAFMC and implemented by NMFS.

Trip Limits During a Monkfish DAS

No monkfish trip limits apply to vessels fishing during a monkfish DAS prior to May 1, 2000. If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch (for the period May 1, 1999 - April 30, 2000) is less than or equal to the Year 1 SFMA target

TAC, a notification will be published in the **Federal Register** specifying that no monkfish trip limit applies to a vessel that is fishing under a monkfish DAS in the SFMA. Otherwise, the following trip limits will apply in the SFMA beginning May 1, 2000, depending on the type of monkfish permit the vessel holds and the type of gear the vessel uses: (1) Category A and C vessels using mobile

gear during a monkfish DAS, a landing limit of 1,500 lb (680 kg) tail-weight or 4,980 lb (2,259 kg) whole weight per DAS; (2) Category B and D vessels using mobile gear during a monkfish DAS, a landing limit of 1,000 lb (454 kg) tail-weight or 3,320 lb (1,506 kg) whole weight per DAS; and (3) any vessel using fixed gear during a monkfish DAS, a landing limit of 300 lb (136 kg) tail-

weight or 996 lb (452 kg) whole weight per DAS.

Incidental Catch for Vessels Not on a Monkfish DAS

Beginning November 8, 1999, the following measures apply:

1. Vessels lawfully using large mesh (5½-inch (14-cm) diamond or 6-inch (15.3-cm) square mesh throughout the body, extension, and codend) while not on a monkfish, multispecies, or scallop DAS, may retain and land whole monkfish up to 5 percent of the total weight of fish on board (or any prorated combination of tail-weight and whole weight percentage based on the conversion factor in § 648.94 of subpart F—Management Measures for the Northeast Multispecies and Monkfish Fisheries).

2. Vessels that are not under any DAS and fishing with small mesh, rod and reel, or handlines may land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight per trip. Small mesh is considered to be any mesh smaller than the large mesh described in paragraph 1. Multispecies vessels that are ≤ 30 ft (9.1 m) and elect not to fish under the multispecies DAS program may also land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip.

3. Multispecies vessels with a monkfish incidental catch permit fishing in the NFMA may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per multispecies DAS, or 25 percent of total weight of fish on board, whichever is less. If the vessel fishes for any portion of the trip in the SFMA, it may land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per multispecies DAS.

Prior to May 1, 2002

1. Vessels with a multispecies permit and a Category C or D limited access monkfish permit - A multispecies vessel that fishes only in the NFMA has no trip limit when it is on a multispecies DAS. If the vessel fishes for any portion of the trip in the SFMA during a multispecies DAS, it may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per multispecies DAS while using mobile gear or 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per multispecies DAS while using fixed gear.

2. Vessels with a sea scallop and a Category C or D limited access monkfish permit - A vessel that has a scallop dredge on board or is on a scallop DAS may land up to 300 lb (136 kg) tail-

weight or 996 lb (452 kg) whole weight of monkfish per scallop DAS.

3. Sea scallop vessels with a monkfish incidental catch permit - These vessels may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS when on a scallop DAS.

After April 30, 2002

1. Vessels with a multispecies and a Category C or D limited access monkfish permit - Multispecies vessels may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per multispecies DAS, or 25 percent of total weight of fish on board, whichever is less. Vessels using fixed gear in the SFMA may land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per multispecies DAS.

2. Vessels with a sea scallop and a Category C or D limited access monkfish permit - Vessels that have a scallop dredge on board or are on a scallop DAS may land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per scallop DAS.

3. Sea scallop vessels with a monkfish incidental catch permit - These vessels may land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per scallop DAS.

Minimum Size Limits

Beginning November 8, 1999, possession or landing of monkfish tails measuring less than 11 inches (27.9 cm) in length or whole monkfish less than 17 inches (43.2 cm) total length by any vessel that has a Federal fisheries permit or any vessel fishing in the exclusive economic zone is prohibited.

Beginning on May 1, 2000, in Year 2 of the FMP, the minimum monkfish size limit for vessels fishing or landing in the SFMA, only, will be 21 inches (53.3 cm) total length or 14 inches (35.6 cm) tail length. If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch for the period May 1, 1999, through April 30, 2000, is less than or equal to the Year 1 SFMA target TAC, a notification will be published in the **Federal Register** specifying the minimum monkfish size limit of 17 inches (43.2 cm) total length or 11 inches (27.9 cm) tail length for vessels fishing for, catching, or landing monkfish in the SFMA.

Gillnet Limits

A vessel issued a monkfish limited access permit or fishing under a monkfish DAS may fish with, haul, possess, or deploy up to 160 gillnets. A vessel issued a multispecies limited access permit and a limited access

monkfish permit or fishing under a monkfish DAS may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 160 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82(k)(1)(i) and that the nets are tagged in accordance with the regulations, as specified in § 648.82. Nets cannot be longer than 300 ft (91.44 m), or 50 fathoms, in length. Beginning November 8, 1999, all monkfish gillnets fished, hauled, possessed, or deployed by a vessel fishing for monkfish under a monkfish DAS are allowed one tag per net, with one tag secured to every other bridle of every net within a string of nets. Tags are obtained as described in § 648.4.

Time out of the Fishery

Beginning January 1, 2000, Vessels with Category A or B permits (i.e., "monkfish-only") are required to declare out of the monkfish fishery and may not use a monkfish DAS for a continuous 20-day block during the months of April, May, and June. Such vessels may engage in other fisheries in which they may legally participate, but they may not possess any monkfish during this 20-day block. Specified periods to protect groundfish spawning (when multispecies vessels are required to declare out of the fishery) also apply to multispecies DAS used when targeting monkfish. Multispecies DAS vessels that declare out of the multispecies fishery for any reason, including the fulfillment of their 20-day out periods, are prohibited from possessing monkfish. Vessels that target species other than groundfish and monkfish are, however, allowed to participate in exempted fisheries during the mandatory groundfish tie-up periods. Multispecies vessels with a category C or D monkfish permit are not required to comply with the time-out requirements described here for monkfish-only vessels.

Framework Adjustment Process

The framework adjustment process includes annual reviews by a Monkfish Monitoring Committee (MFM), which evaluates the effectiveness of the FMP to meet the fishing mortality and rebuilding targets. The MFM develops management options for consideration and approval by the Councils, and the Councils are required to recommend changes, adjustments, or additions to the management measures in effect to the Regional Administrator, by February 7 of each year, for implementation at the beginning of the fishing year. The Regional Administrator may select

measures recommended by the MFMC that were not rejected by either Council if the Councils fail to submit a recommendation. Adjustable management measures include: (1) target TACs, (2) Overfishing Definition reference points, (3) closed seasons or closed areas, (4) minimum size limits, (5) liver to monkfish landings ratios, (6) annual monkfish DAS allocations and monitoring, (7) trip or possession limits, (8) blocks of time out of the fishery, (9) gear restrictions, (10) transferability of permits and permit rights, and (11) other framework measures in 50 CFR 648.90 and 50 CFR 648.55.

Restrictions on Liver Landings to Prevent High-grading

Landings of monkfish livers are restricted to 25 percent of the total weight of monkfish tails or 10 percent of the weight of whole monkfish, whichever is applicable.

Minimum Mesh and Gear Restrictions

Vessels that fish while they are called into the monkfish DAS program must use large mesh, unless the vessel is also fishing during a multispecies DAS. When called into the monkfish (but not the multispecies) DAS program, large mesh is defined as 10-inches (25.4-cm) square or 12-inches (30.5-cm) diamond for trawls and 12-inches (30.5-cm) diamond for gillnets. Vessels that have a category C or D permit and a limited access sea scallop permit may not use a dredge during a monkfish DAS.

Comments and Responses

Four written comments on the Monkfish FMP were received during the comment period date established by the NOA of the Monkfish FMP, which ended February 1, 1999. These comments were considered by NMFS before it approved the Monkfish FMP on March 3, 1999. Those comments received during the comment period on the FMP are also addressed here.

NMFS received additional comments on the proposed rule, as well as comments on the FMP, during the comment period specified in the proposed rule, which ended on March 26, 1999. Because the comment period for the rule was distinct from, and followed the comment period for the FMP, comments received during the proposed rule period were not considered in NMFS's determination to approve the Monkfish FMP. However, these comments were considered in approval and implementation of the proposed measures by this final rule. Of the second group of letters received, only comments on the proposed rule are addressed here since the comment

period on the FMP had closed prior to their submission.

Comment 1: While one commenter agreed that the FMP "is likely to eliminate overfishing and begin stock rebuilding," it criticizes what it perceives as an inequity regarding the DAS allocated to scallop and multispecies permit holders, relative to the fishing time allocated to holders of other Northeast region limited access fishing permits. Specifically, the commenter objects to the provision that prevents "monkfish-qualifying" scallop and multispecies permit holders from receiving an allocation of monkfish directed DAS in excess of their scallop and multispecies DAS. The commenter, viewing this provision as discriminatory, requested that it be disapproved and returned to the Councils for further deliberation.

Three comments stated that New Bedford/Fairhaven fishermen are being forced to trade an economic viability that would otherwise be available to them - that is, that there must be a trade-off of days in the scallop and multispecies fisheries. In addition, scallop and multispecies fisheries are forced to forfeit an economic opportunity in their separately regulated, unrelated industry. Other participants in the monkfish fishery that do not have a multispecies or scallop permit forfeit nothing to be able to participate in this fishery. At the very least, for those vessels that can demonstrate that they have participated, there should be a limited monkfish fishery, exempted from either their scallop or groundfish DAS.

Response 1: Most multispecies and scallop vessels will qualify for monkfish limited access based on a vessel's monkfish landings while targeting a mix of multispecies/monkfish or scallops/monkfish. Most monkfish are landed as incidental catch from groundfish and scallop fishing. In the past, this incidental catch accounted for over 80 percent of the catch of monkfish, but increases in directed effort in the early to mid-1990s helped reduce that incidental catch proportion to 70 percent. In keeping with the mixed catch nature of these fisheries and the type of fishing effort that qualifies the vessel, it is necessary that, when on a monkfish DAS, trips that exceed the monkfish incidental catch allowances must also count against the multispecies or scallop DAS. If multispecies and scallop vessels were able to take their monkfish DAS apart from (and in addition to) multispecies or scallop DAS, fishing mortality goals could not be met. In response, the Councils would have to reduce monkfish DAS

allocations to uneconomic levels, possibly to levels that are less than one trip length in duration.

Comment 2: Many commenters felt that the rule was inconsistent with national standard 2, which requires use of the best scientific information available, for several reasons. First, landings data used in the development of the management measures in the FMP (through 1996) were from a period prior to the implementation of the exempted area located primarily off the Continental Shelf. Second, the FMP's discussion of economic impact is limited to old data and vessel owners only. Third, the existing data do not support management based on two stocks, and the northern and southern areas are arbitrarily divided into management areas without evidence that the areas contain different stocks. Fourth, the stock assessment does not show a large biomass of large mature monkfish beyond the continental shelf, as evidenced by existing landing slips. One group felt that these inadequate data led to the development of over-restrictive specifications set forth in the rule.

Several commenters noted that the Northeast Fisheries Science Center (NEFSC) bottom trawl surveys do not historically land significant amounts of monkfish. One commenter charged that fishery dependent data, such as landings, harvesting locations, depth of water at locations, and size landed, have been ignored or minimized during FMP development by not including 4 years of mandatory reporting data.

Response 2: NMFS has determined that the management measures were based on the best scientific information available and upon sound conclusions based on such information where no direct information or data were available. The most recent detailed stock assessment was conducted by SAW 23 (NEFSC-1997) during the fall of 1996. This assessment used fishery-dependent and survey data through the end of 1995 to evaluate the status of the monkfish resource. Survey data are the most complete data and, therefore, the best scientific information available. The estimates of fishing mortality trends from 1963 to 1995 were analyzed in 5-year blocks to smooth the inter-annual variation that occurs in a randomized survey. The analysis indicated that adding 1997 data would not radically alter the estimates of fishing mortality, although the proportion of monkfish at larger size may still be declining.

Admittedly, while the surveys do not encompass the entire range of the monkfish resource - no samples were taken offshore of the Continental Shelf

edge - these surveys do provide a reasonable estimate of stock abundance for that portion of the population in the coastal and shelf areas. The surveys are also the only scientific data available on this subject. The fact that a portion of the monkfish resource lies in waters seaward of the edge of the continental shelf has been known since at least the 1950s. It is clear from the severe depletion of the resource on the shelf (as revealed by NMFS' surveys) that subsidies or exchanges of fish from deep to shallow waters were insufficient to halt the decline of the inshore portion of the resource due to fishing. This implies that the offshore portion of the resource is small and/or the exchange rate is low. In any regard, the severe depletion of the shallow portions of the resource in the face of increased fishing is indicative of the vulnerability of this resource to harvest. Given the likely greater sensitivity of deep-water resources to exploitation, there is no reason to believe that an intensive, unregulated fishery in the offshore waters could be sustained. A prudent use of the "precautionary management" principal, as envisioned in the Sustainable Fisheries Act, would be to assume that the offshore portion of this resource would be no more productive than the inshore (depleted) portion of the resource and to develop appropriate management regulations. This is the basis of the FMP.

The portion of the range of monkfish not included in the NEFSC surveys is in deep water (>150 fathoms). Based on the continued low levels of abundance throughout the shelf, as indicated by recent surveys, there is no evidence that the deep water portion of the resource is contributing a significant amount of recruitment to the surveyed region. Whatever recruitment is being provided from deep water is jeopardized by the current areal expansion of the commercial fishery into these areas.

Furthermore, in addition to the survey-based estimates, the 21st SAW included monkfish within its comprehensive assessment of the northeast demersal finfish complex. Most of the analyses in the comprehensive assessment were intended to show broad, long-term trends that were consistent across species. The monkfish indices were not classified by management area, but showed a decline to low levels of biomass through 1987. Since that time, biomass has fluctuated without trend at low levels, while abundance has increased in the NFMA.

More recent information does not contradict the conclusion of SAW 23 that monkfish are at least fully exploited

and might be over-exploited. Given monkfish's wide range and the extent of the surveys, the FMP's management measures are based on the best scientific information available and appear to be consistent with national standard 2. As other data become available, they may be incorporated by way of management measures altered under the framework provision.

Finally, the division of the monkfish fishery into two management areas is partly based on the biological characteristics of the resource and partly based on the differences in fisheries in the Gulf of Maine versus areas to the south. Although growth rates are similar for monkfish in both areas, monkfish demonstrate different patterns in recruitment and stock biomass over the survey time series. There appears to be little adult migration between the two areas and egg masses from spawning in the Gulf of Maine probably stay within the Gulf of Maine and northern Georges Bank.

Catches from each area will be monitored to evaluate the effectiveness of the management measures to meet the individual mortality objectives.

Comment 3: One commenter felt that the FMP and its regulations violate national standard 3, relating to managing fish stocks as a unit, because the NEFSC survey of the stock does not include the Continental Shelf (200 m, or 100 fathoms), where a directed fishery is prosecuted. This comment was echoed by all of the legislators and by most of the commenters who faulted the overfishing definition for including no data from offshore of the Continental Shelf edge, where significant monkfish effort was directed after adoption of the Northeast Multispecies FMP's Amendment 7. One commenter felt that monkfish in this area should be managed via establishment of a separate management area. Most commenters emphasized that NMFS had approved a monkfish exemption area more than 2 years ago in that area, and most commenters added that the significant landings from there in the past 2 years are not reflected in the FMP.

Response 3: NMFS has determined that the Monkfish FMP and its implementing regulations are consistent with national standard 3. National standard 3 requires that a stock be managed as a unit throughout its range, and that interrelated stocks be managed as a unit, or in close coordination. Data available indicate that the monkfish range from Canadian waters to Cape Lookout, North Carolina, and possibly further south. Since it is unclear if there are several stocks within this range, the stock is managed in close coordination

throughout the known area. While the NEFSC survey does not routinely sample beyond the continental shelf break, NMFS is confident that a representative sample of the population is accounted for in the survey. Further information on this use of survey data can be found in Response 2.

Comment 4: Several commenters felt that the proposed regulations violate national standard 4, relating to fairness and equity of the measures to fishers. Specifically, several commenters maintained that the FMP does not accurately depict the socioeconomic impact of the regulations on New Bedford, does not mention New Bedford's reliance on fishing in the monkfish exempted area offshore, would increase the unemployment roles in the Commonwealth of Massachusetts, and disproportionately impacts New Bedford scallopers, draggersmen, wholesalers, and processors.

Many commenters maintained that no mention was made of fish processing companies in the discussion of economic impacts and stated that the economic impact incorporated in the FMP was not subject to scrutiny by economists. One commenter stressed that denying access to the deep water fishery in the canyons will have a negative effect on New Bedford's economy and that there was no consideration of this when proposing this measure. A fishery supply company said that mesh changes from 8 inches (20.3 cm) in the codend to 10 inches (25.4 cm) square or 12 inches (30.5 cm) diamond in the codend will devastate its business in that it will result in its possessing a mesh inventory that will have no other application.

Response 4: The FMP considers the socioeconomic impact on New Bedford, as well as all ports that land monkfish. Data in the FMP list monkfish revenue by port (including New Bedford) from 1994 through 1997. Supplement 1 to the Monkfish FMP, dated October 23, 1998, also summarizes the consequences of the proposed action for small businesses, including processors in New Bedford. During the second round of public hearings, the Councils were given data for New Bedford's fishing industry, including the New Bedford processing sector, which were considered when assessing economic and social impacts.

National standard 4 requires fisheries regulations not to discriminate against residents of different states and that any allocation of fishing privileges be fair and equitable to all such that the allocation be calculated to promote conservation and that no particular entity acquire an excessive share of such

privileges. The Councils and NMFS considered these factors, as incorporated in the FMP and other documents, in developing the Monkfish FMP and concluded that the measures adopted were the best suited to provide fair and equitable fishing opportunities to all sectors of the fishery.

Comment 5: Several commenters felt that the changes to allow North Carolina industry to qualify for limited access permits were unfair.

Response 5: The 1997 public hearing document erroneously indicated that the southernmost line of the SFMA would be at the Virginia-North Carolina (NC) border, which would have exempted NC catches from management. In fact, the southernmost line is the North Carolina/South Carolina border. Under the correct provision, NC fishermen are subject to the same qualification criteria that apply to vessels in other states and may use state landings data to document their participation in the monkfish fishery. There is no bias that excludes NC participants from meeting the limited access criteria, and NC vessels that do not qualify appear to be indistinguishable from vessels in other states that do not qualify. This error was corrected in subsequent versions of the document, which were available to the public. Fishers affected by these measures were thus provided ample opportunity to comment on them, and the Councils and NMFS were fully aware of comments concerning NC participants before the Councils adopted the FMP.

Comment 6: One commenter stated that unreasonable trip or daily limits cause a great deal of discards at sea, which do not survive.

Response 6: NMFS does not believe that the trip or daily limits established in the Monkfish FMP are unreasonable or that they will result in a great deal of discards. In fact, after implementation of the FMP, there are no trip limits established in the NFMA for the first 3 years nor during the first year in the SFMA for limited access monkfish vessels fishing during either a monkfish or multispecies DAS.

Comment 7: A processor commented that the preamble to the proposed rule states that the rebuilding period is 10 years, based on consideration of the status and biology of the stock and on the needs of fishing communities. The commenter continued that the data relevant to the biology and to the status of the stock have not been acquired by NMFS in the 8 years of looking at the species and that the assessment of the needs of the communities was grossly inadequate in the FMP. Thus, it is

unrealistic to state credibly to the constituents of this fishery that their community needs determined the rebuilding period.

Response 7: Sections 304(e)(4)(A)(i) and (ii) of the Magnuson-Stevens Act requires that the time period specified for ending overfishing and rebuilding the fishery shall be as short as possible, not to exceed 10 years. The FMP takes into consideration the needs of the communities as justification for establishing the 10-year rebuilding period and not a shorter rebuilding period. Further, as stated previously, the management measures in the FMP must be based on the best scientific information available.

Comment 8: Several commenters commented that the proposed rule is not consistent with national standard 1 because the FMP cannot achieve optimum yield as it seeks to return stock to a level that nearly equals an unfished state, and that the F_{target} and $F_{\text{threshold}}$ dates (1970–1979) predate the directed and even incidental fisheries and, therefore, are not relevant when attempting to identify a parameter for optimal sustainable yield.

Response 8: Threshold fishing mortality rates are estimates of F_{rep} , the fishing mortality rate that results in long-term replacement of the stock. These threshold values are estimated as the average mortality rate for a period when monkfish in the two management areas were relatively abundant and stable. Based on biological data from the research survey, the monkfish technical working group recommended that this period be 1970–1979.

This is part of the overfishing definition, which describes overfishing thresholds that should be avoided and management targets to be achieved. The definition is consistent with NMFS's "Scientific Review of Definitions of Overfishing in U.S. Fishery Management Plans" and complies with the requirements of the Sustainable Fisheries Act and national standard 1 guidelines. For a further discussion of compliance with national standard 1, see Section 5.1 of the Monkfish FMP.

Comment 9: One commenter noted that there is no accommodation in the proposed rule for scallop vessels as pertains to incidental catch for vessels not on a monkfish DAS.

Response 9: Such accommodation is specified at § 648.94(c)(2)(i) and (ii).

Comment 10: One commenter stated that the MFMC should have more than two industry representatives.

Conversely, another group stated that the Magnuson-Stevens Act should not allow industry stakeholders to be committee members because the

resultant plan represents that member's interests and further questions the validity and constitutionality of a law "written for and by a few participants in the industry."

Response 10: The various species monitoring committees established by the Councils in the Northeast Region are balanced in their representation and usually include one industry representative. Because the MFMC encompasses two management areas, it will have two representatives to present the industry perspective in matters before the MFMC. There is also ample evidence of extensive and wide-ranging industry involvement at meetings of the Oversight and Industry Advisory Committees and at Council meetings, in developing this FMP. Further, the Magnuson-Stevens Act allows for industry stake-holders to participate in FMP development. All Council and committee meetings are open to public participation.

Comment 11: One industry processor commented on the dealer reporting burden estimate specified under the Paperwork Reduction Act (PRA). The commenter said that the dealer employment report takes approximately 30 minutes to do, not the 2 minutes per report estimated by NMFS, and that vessel trip reports take approximately 15 minutes per report, not the 5 minutes per report estimated by NMFS.

Response 11: The dealer employment data is part of the fishery products report (NOAA Form 88–13) in the Processed Product Family of Forms, OMB Control No. 0648–0018. The employment data on that form is mandatory, while the remainder of the data requested on the form is voluntary. The employment data is estimated to take 2 minutes per response, whereas the entire report is estimated at 30 minutes per response. NMFS estimates of burden for meeting all reporting requirements, including the vessel trip reports, reflect only the additional burden placed on respondents for items not normally collected in the normal course of their business practices.

Comment 12: One commenter stated that there is no provision in the proposed rule for notifying vessel owners of Monkfish Incidental Catch Permits. The commenter added that there is no apparent notification of the entire industry, including all vessels registered as fishing vessels, that possession of monkfish requires a permit for which they must apply.

Response 12: Section 648.4(a)(9) of the proposed rule states that "any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid monkfish

permit to fish for, possess, or land any monkfish in or from the EEZ." An incidental catch permit for monkfish is an open-access permit - it is available to any vessel, at any time, wishing to fish for monkfish. Consistent with other species FMPs, the publication of these regulations as a final rule in the **Federal Register** will serve as notification to vessel owners. Additionally, after the approval of the FMP, the NMFS Northeast Region mailed a letter explaining the permitting process to all monkfish permit pre-qualifiers, past and present, and to all current permit holders of any fishery permit.

Comment 13: A commenter questioned the skin-on requirement for fish or parts, proposed under the section "Monkfish minimum fish sizes." The commenter maintained that, in practice, monkfish cheeks and livers are generally not landed with the skin on. The proposed rule should also make clear that possession of monkfish cheeks is allowed.

Response 13: The skin-on requirement is for purposes of determining compliance with the minimum tail size requirement. Specifically, the minimum fish size, as applied to the tail, is determined by measuring from the fourth dorsal spine, which must, therefore, be intact. Thus, for enforcement purposes, the skin must remain on the tails. NMFS presumes that livers and cheeks will be processed only from the same legal-sized fish from which tails are obtained. NMFS further recognizes that it is not possible to land a liver "skin-on." Since the liver and cheeks are not a determining part of the minimum fish size requirement, the skin-on requirement does not apply to them.

Comment 14: A commenter said that the proposed rule states that the procedures for administering the trip limit for cod under the Northeast Multispecies FMP apply to landings of monkfish during a monkfish DAS and added that clarification is needed for those not familiar with the multispecies FMP.

Response 14: Due to NMFS disapproval of the running clock provision, the particular section referenced by the commenter has been removed from this final rule. Therefore, no clarification is necessary.

Comment 15: A vessel owner stated that:

the proposed rule violates the Regulatory Flexibility Act (RFA) because 1) it invokes a policy that has *takings implementations* as set out in Executive Order (E.O.) 12630 in Sect. 601 of the Act and does not compensate for the takings; 2) it does not follow the *regulatory philosophy* in E.O. 12866 of the

Act, which requires NMFS to select regulatory approaches to maximize net benefits; 3) NMFS has not based its decision on the *best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation* as set out in E.O. 12866, Sect. 1(b)(7) in Sect. 601 of the Act; 4) it does not *impose the least burden on society, including individuals, businesses of different sizes* * * * as required in E.O. 1206 c, Sect. 1(b)(11) and is not *simple and easy to understand language* as required in Sect. 1(b)(12) of the Order; 5) it is a *significant regulatory action* under E.O. 12866 and requires a *regulatory plan* approved by the Agency head, which requirement has not been met as required in Sect. 4(C)(A) through (F); 6) no *RFA* has been prepared describing the impact of the proposed rule on small entities (boat owners, processors, and related industry support businesses) as required by Sect. 603 of the Act; 7) there is no *final RFA* that describes and estimates the number of small entities and the steps taken to minimize the significant economic impact on small entities as required by Sect. 604 of the Act; and 8) NMFS has not carried out the periodic review of its rules, which have or will have a significant economic impact upon a substantial number of small entities as required by Section 610 of the Act - there is no indication in the FMP and the proposed rule that this will be done going forward.

Response 15: This particular comment makes reference to several Executive Orders (E.O.s) as a basis for compliance with the RFA. The requirements of the mentioned E.O.s are not a pre-requisite to a determination on an action's compliance with the RFA. The thresholds for action on each of these requirements differ substantially, and there is no basis for arguing that an action fails to comply with the RFA on the grounds of any perceived relationship between it and an E.O. Further, NMFS has determined that it meets the requirements of all applicable E.O.s.

That being said, the analysis included in the amendment indicates that there are non-selected alternatives that would have imposed a more rigorous reduction schedule. However, these options were rejected on the basis of the greater economic impact on small entities, and the current 4-year phase-in was selected to ease economic dislocation while still achieving rebuilding. This option is consistent with the regulatory philosophy of E.O. 12866 and the separate requirements of the RFA. In any event, the RFA does not require that the least burdensome alternative be chosen. Rather, for an action for which an IRFA/FRFA was prepared, NMFS must describe the steps taken to minimize the economic impact on small entities consistent with the stated objectives of applicable statutes, the reasons for selecting the alternative in

the final rule, and the reasons why significant alternatives to the rule were rejected. An initial regulatory flexibility analysis was prepared. The analysis is presented in Section 8.3.6 of the FEIS. That analysis illustrates the economic impacts of and significant alternatives to the proposed action. That document was open for comment with the rule. NMFS is addressing comments received on the IRFA in this preamble to the final rule, has made revisions to the rule, and has prepared a FRFA. This rule contains a summary of the FRFA, as required by the RFA. Further, the action was found significant under E.O. 12866, primarily for the controversial and novel legal issues it raises.

Comment 16: A commenter stated that the measures discussed in the January 1998 public hearing document, pertaining to trip limits for scallop and multispecies vessels that also qualified for a monkfish limited access permit, were more lenient in the SFMA than the measures that were contained in the proposed rule. Since these later measures were more restrictive, the commenter feels that the measures should have been submitted to another public hearing process before publication of the proposed rule.

Response 16: The Monkfish Committee and the Councils considered the comments received during the public hearings when further revising the management measures in the Monkfish FMP. The public had ample opportunity during these subsequent Monkfish Committee and Council meetings to voice its concerns. The measures were further open to public comment for the period established by the NOA for the Monkfish FMP. These comments were considered prior to the FMP approval/disapproval process. Finally, the proposed rule also provided an opportunity for public comment on the measures.

Comment 17: A fishing company stated that the FMP understates dramatically the economic impact of the FMP, and estimates the impact to between 150 and 200 million dollars a year, not including the multiplier effect of the dollars in the community nor the impact on national trade. The economic statement treats the fishery as primarily a bycatch fishery and, the commenter stated, this is not the case.

Response 17: Historically, over 80 percent of the monkfish landings are made as bycatch from groundfish and scallop fishing. Recent directed effort, particularly by scallop and gillnet vessels and deeper water trawls, has lowered that percentage to 70 percent bycatch. However, the bulk of this fishery is still bycatch. The economic

impact analysis keeps in mind the fact that international markets determine U.S. domestic prices. Costs to the industry over the long term will be offset by increased net benefits and gross revenue. These estimated benefits are considered underestimated because the effect of the size limit and the rebuilt age structure will increase the proportion of larger, more valuable monkfish.

Comment 18: Several commenters noted that records were not required to be kept during the specified qualifying period which may cause many vessel owners who should be able to qualify to not qualify. They also stated that this is unfair to vessel owners (generally gillnetters catching whole monkfish for the Asian market) who entered the fishery late into the qualifying period or after the qualifying period ended.

Response 18: A notice of a "control date" for entry into the monkfish fishery was published in the **Federal Register** on February 27, 1995 (60 FR 10574), which described potential eligibility criteria for future access to that resource should a management regime be implemented to limit the number of participants in the fishery. The intent was to discourage new entries into this fishery based on economic speculation, which was of particular concern at that time due to the high price of monkfish livers to the Asian market. The announcement further gave the public notice that they should locate and preserve records that substantiate and verify their participation in the monkfish fishery.

Comment 19: A commenter stated that the lower trip limit for fixed, versus mobile, gear in the proposed rule is discriminatory toward the fixed gear sector and is in violation of national standard 4 relating to fairness and equality of the measures to fishers.

Response 19: The purpose of trip limits is to be fair and equitable to all fishers. They are designed to reflect each gear sector's historic level of participation in the fishery and approximate the customary monkfish bycatch of these vessels. Since the limits represent equivalent reductions for each gear sector to promote conservation, the limits have been determined to be consistent with national standard 4.

Comment 20: One industry group stated that the biomass-based overfishing definition is not authorized by the Magnuson-Stevens Act and that the proposed rule's biomass-based overfishing threshold is inexplicable in that it is much more restrictive than the already over-restrictive counterpart threshold in the FMP.

Response 20: In order to comply with the SFA and national standard 1 of the Magnuson-Stevens Act, an overfishing definition must, at a minimum, have an objective and measurable way to determine the status of a stock and the amount of fishing that should be specified. There are two types of determinants to satisfy this need: stock biomass and fishing mortality. These two should be compared with a maximum fishing mortality (F) threshold and a minimum biomass (B) threshold, which are chosen based on a stock's reproductive potential, and a determination made as to whether a stock is overfished (F is too high) or is in an overfished condition (B is too low). For some stocks, this threshold biomass level should be no less than the minimum stock size that could be rebuilt in 10 years or less to the biomass level that results in the maximum sustainable yield, if F was reduced to minimal practical levels. Thus, biomass, in the form of biomass targets, must be considered when attempting to achieve MSY on a continuing basis. In fact, it is the crux of the national standard 1 criteria and is, therefore, a critical component of any overfishing definition.

Comment 21: Two commenters questioned the length of the comment period on the proposed rule. Specifically, one asked how NMFS can approve the FMP 24 days before the close of comments on the rule, an apparent violation of the Magnuson-Stevens Act and the Administrative Procedure Act (APA). The FMP was approved on March 3, 1999, and the comment period for the proposed rule closed on March 26, 1999. Another stated that NMFS did not provide those directly impacted by the FMP with sufficient time to comment on it, nor the opportunity to comment on it or to inform the agency and the Secretary of issues prior to the FMP's approval.

Response 21: The Magnuson-Stevens Act, as amended in 1996, established independent review schedules for both the FMP and the implementing regulations. The NOA, published on December 2, 1998, for the monkfish FMP, established the beginning of the 60-day public review period for the FMP. The statutory date by which NMFS must approve, partially approve, or disapprove the FMP is 30 days after the end of the comment period on the FMP, regardless of when the proposed rule to implement the FMP is published. The proposed rule to implement the measures contained in the FMP had its own comment period. Under usual circumstances, the review of both elements will run more or less

concurrently. In cases of extreme complexity or controversy, the review schedules can become disconnected, as with this regulation. Consequently, the approval/disapproval date as specified under the Magnuson-Stevens Act arrived during the comment period for the regulations implementing the FMP. However, the Magnuson-Stevens Act requires that both the FMP and the regulations implementing it be consistent with the requirements specified in the Act. Consequently, the proposed rule is also reviewed for consistency. At the time of the publication of the proposed rule (February 16, 1999), NMFS had not yet made the determination that the FMP was consistent with the Magnuson-Stevens Act. It did make that determination during the comment period on the proposed rule. Thus, the approval of the FMP separate from the final rule is not inconsistent with the Magnuson-Stevens Act or the APA.

Comment 22: An industry group requested that the Secretary order interim management measures consisting of (1) a limited access program as specified in the rule, (2) permit and reporting requirements as specified in the rule, (3) minimum fish sizes as specified in the rule, (4) area specific spawning closures, and (5) total allowable catch equal to the mean harvest of recent years to be controlled via DAS, or trip limits, or both.

Response 22: This final rule will implement the first three elements of the commenter's request in sufficient time to address conservation needs in this fishery, and, therefore, interim management measures are not necessary. The final two items are inconsistent with the approved FMP and are not considered to be necessary at this time. However, the rule implements a framework provision whereby actions such as these can be implemented. A framework action will allow for abbreviated rulemaking, while still allowing for public comment on the action.

Comment 23: One commenter noted that the OFDs specified in the proposed rule differed from that specified in the FMP. Specifically, the rule indicated a biomass threshold for the NFMA of 2.29 kg/tow and for the SFMA of 1.82 kg/tow, whereas the FMP specifies 1.45 kg/tow and 0.75 kg/tow, respectively.

Response 23: The proposed rule inadvertently labeled the biomass targets from the FMP as biomass thresholds. The text of the OFD, as included in the FMP, is the correct OFD for this FMP. Since the overfishing definition is not codified, the error is not corrected per se by this rule.

Further, future management actions will be based on the overfishing definition and associated levels as stated in the FMP, not as stated in the proposed rule.

Comment 24: One commenter remarked on the complexity of the proposed rule by stating that by incorporating the regulations for monkfish in the multispecies regulations, the Agency has significantly increased the complexity of regulations related to monkfish. The commenter concluded that it is plausible that the industry will be in violation without being aware that it is in violation.

Response 24: NMFS agrees that regulations are becoming increasingly complex and encourages people to obtain a copy of the regulations and become familiar with them. NMFS suggests that industry participants also contact the New England Fishery Management Council to request to be placed on its mailing list for news releases, which explain new regulations.

Comment 25: One of the industry's comment stated that mortality controls on fishing in other FMPs - closures, state restrictions, DAS, the buyback program, multispecies and scallop reporting mechanisms - all protect the harvest of monkfish, and are not reflected in the FMP.

Response 25: The monkfish FMP does consider other measures that may have had a direct or indirect impact on monkfish mortality, and NMFS recognizes that these measures contribute to the conservation of monkfish. Nevertheless, as documented in the FMP, these measures by themselves have not been sufficient to prevent overfishing and rebuild monkfish stocks consistent with Magnuson-Stevens Act's requirements.

Changes in the Final Rule From the Proposed Rule

Changes made are primarily related to technical and administrative needs and concerns and are made to clarify the intent of the regulations. These changes are listed below in the order that they appear in the regulations:

In § 648.4, paragraph (a)(9)(i)(H), a reference to § 648.4(a)(3)(i)(H) is corrected to read § 648.4(a)(1)(i)(H).

In § 648.7, paragraph (b)(1)(i) is revised. This paragraph in the proposed rule should have only added the requirement for vessel owners or operators to report monkfish on the daily fishing log reports. However, this paragraph inadvertently required only moratorium permitted vessels to maintain daily fishing log reports for all fishing trips. Under regulations implemented November 1, 1998 (64 FR 52639, October 1, 1998), the

requirement contained in this paragraph applies to all Federally permitted vessels including party or charter vessels and is no longer limited to only moratorium permitted vessels. The change in the above final rule is consistent with current regulations.

In § 648.7, paragraph (b)(1)(iii), which references old reporting requirements for any party or charter vessel issued a Federal summer flounder or scup permit, other than a moratorium permit, is removed. The monkfish proposed rule inadvertently addressed the reporting requirements for charter and party vessels in (b)(1)(iii), which are now addressed in paragraph (b)(1)(i) of the above mentioned final rule.

In § 648.10, paragraph (c), a reference to § 648.4(a)(1)(i)(H)(3) is corrected to read § 648.4(a)(1)(i)(M)(3).

In § 648.10, paragraph (c), a reference to § 648.4(a)(9)(i)(J) is corrected to read § 648.4(a)(9)(i)(N)(3).

In § 648.10, paragraph (c)(5), which references § 648.94(b) and (c), is corrected to refer to § 648.94(c) only and is revised for clarity.

In § 648.14, paragraphs (y)(8) and (y)(11), which pertained to possession and trip limits and included consideration of the disapproved "running clock" provision, are revised and simplified.

In § 648.80, paragraphs (a)(4)(i)(A), (a)(7)(iv)(B), (a)(8)(i), (a)(9)(i)(D), and (b)(3)(ii), which pertain to the allowable incidental catch of monkfish and monkfish parts in the various exempted fisheries, are revised to clarify that the lesser of the allowable incidental catches heretofore specified and the incidental catches specified under the monkfish regulations applies.

In § 648.92, paragraph (b)(1) is revised to clarify that multispecies and scallop permit holders that also qualify for a monkfish limited access permit shall be allocated up to 40 monkfish DAS, depending on whether they have enough multispecies and/or scallop DAS to use concurrently with their monkfish DAS allocation as required by § 648.92(b)(2).

In § 648.92, paragraph (b)(5) is revised to clarify that spawning season restrictions will be implemented effective January 1, 2000.

In § 648.92, paragraph (b)(8)(ii) is revised to clarify that tagging requirements for gillnetters fishing for monkfish under a monkfish DAS will be implemented effective May 1, 2000.

In § 648.93, paragraph (a)(2) is revised to clarify that monkfish cheeks and livers are exempt from the requirement of having to have skin on while possessed on board and at the time of landing.

In § 648.94, paragraphs (b)(2)(vi)(A), (B), and (C), which pertain to landings in consideration of the disapproved "running clock" provision, are removed.

In § 648.94, paragraph (b)(2)(vi), which references the trip limit for cod and which reference does not apply because of the disapproval of the "running clock" provision, is revised and simplified.

In § 648.94, paragraph (b)(7) is added to clarify that a limited access scallop vessel fishing under a monkfish DAS (Category C and D) that is not using dredge gear and does not have dredge gear on board will be subject to the applicable trip limits specified at § 648.94(b)(1) and (b)(2). A vessel that has a Category C or D monkfish permit and a limited access sea scallop permit is prohibited from using dredge gear or possessing it on board during a monkfish DAS. Paragraph (b)(7) states explicitly what was implied in the proposed rule and is consistent with Section 4.6.3 of the Monkfish FMP.

In § 648.94, paragraph (e), which referenced transiting when exceeding the monkfish landing limit, which would have been in accordance with the disapproved "running clock" provision, is revised.

In § 648.96, paragraphs (a)(2) and (c)(1), which referenced the "running clock" provision, which is a disapproved provision, are revised.

In § 648.96, paragraphs (a)(4) and (c) are corrected, as requested by the NEFMC, by removing a requirement that documentation and analyses for a framework adjustment be made available at least two weeks before the first of the final two meetings, which would have been inconsistent with the framework adjustment procedures of both the Northeast Multispecies and Atlantic Scallop FMPs.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648-0202 for §§ 648.91 through 648.94, and § 648.96.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

NMFS has determined that the FMP that this rule implements is necessary for the conservation and management of

the monkfish fishery and is consistent with the national standards of the Magnuson-Stevens Act and other applicable law.

This action has been determined to be significant for the purposes of E.O. 12866.

The Council prepared an FEIS for the Monkfish FMP; an NOA was published on January 15, 1999 (64 FR 2639). This action is expected to have a significant impact on the human environment. NMFS determined upon review of the FMP/FEIS and public comments that approval and implementation of the Monkfish FMP is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to halt overfishing and rebuild the monkfish stock; protect harbor porpoise; provide economic and social benefits to the fishing industry in the long term; and contribute to better balance in the ecosystem in terms of monkfish and groundfish resources.

In compliance with the Regulatory Flexibility Act, the Council prepared and NMFS adopted an IRFA contained in the FMP that describes the economic impacts of the proposed rule, if adopted, on small entities. The FRFA consists of the IRFA, public comments and responses thereto, the analysis of impacts and alternatives in the Monkfish FMP, and the summary that follows. The reasons for selecting the measures are set out in the preamble to this rule and in the Monkfish FMP.

The measures are restrictive, and impacts on the industry are expected to be considerable. In the early years of the program, some vessel owners may be unable to cover their operating costs, in part because of these restrictions and because of the poor condition of the stocks. Such vessel owners are expected to leave the fishery. Relative to the status quo, however, implementation of this FMP is expected to produce significant positive effects on a substantial number of small entities after stock abundance of monkfish recovers. The majority of the vessels in the monkfish fishery are considered small entities and, therefore, all alternatives and measures intended to mitigate adverse impacts on the fishing industry necessarily mitigate adverse impacts on small entities. Chief among the measures taken that minimizes the impacts on small entities, however, is the selection by the Council of the longest rebuilding period allowed by the Magnuson-Stevens Act. The Magnuson-Stevens Act requires that overfishing be ended and the fishery rebuilt in the shortest time period as possible, not to exceed 10 years. The Council selected

10 years to lessen the impact on the fishing communities and minimize adverse impacts on small entities. For a discussion of other measures selected to mitigate impacts on small entities, see the comments on the FMP, proposed rule, and IRFA, which are summarized and responded to in the preamble.

The monkfish management measures will reduce the overall revenues of the monkfish fishery by approximately 50 to 54 percent in the first 3 years of the program compared to the status quo. Further reductions in catch are necessary in Year 4 to stop overfishing and allow rebuilding. These measures will also reduce overall revenues by 69 percent compared to the status quo.

The impact of these measures will not be uniform for all vessels or all sectors. Instead, the measures will have different effects on different gear groups, with vessels using gillnets and vessels fishing in the Mid-Atlantic being relatively more affected than other vessels. Due to the requirement and desirability to minimize regulatory discards, the catch reduction for vessels that qualify for a limited access monkfish permit are more severe than for vessels that target other species and land their monkfish incidental catch. Fishery sectors that rely more heavily on monkfish will, therefore, experience greater effects than other groups.

Projected revenues from fishing will be positive beginning in the year 2009, which will create demand for other goods and services in the area and lead to increased production and employment. The overall impacts will be positive. These measures are expected to increase net present value of gross revenues by \$20 million over 20 years. Including the estimated cost savings is expected to produce an increase in net benefits to the nation of \$38 million over a 20-year period. The negative effects of the non-selected alternatives would be greater than those of these selected measures.

The recreational sector is not expected to be negatively impacted by this action.

Alternatives Considered, but Rejected by the Councils

Alternatives 1, 2 and 4 were taken to public hearings in January 1997, as non-preferred alternatives. Due to the preponderance of public comment for (then) preferred Alternative 3 the Councils chose to continue development of Alternative 3 for inclusion in the FMP. Alternative 3, along with non-preferred Alternatives 3a and 3b, were taken to public hearings in January, 1998. See also Section 8.1.2.2.1. of the Monkfish FMP/EIS for

rationale for the adoption of the preferred alternative. The alternatives are summarized below.

1. No Action - Status quo

See Volume I, Section 8.1.4.3 of the Monkfish FMP/EIS.

2. Non-preferred Alternative 1 - Bycatch trip limits and quota-controlled limited access fishery

See Volume I, Section 8.1.4.4.1 of the Monkfish FMP/EIS. Alternative 1 was rejected because quotas would not work well for many mixed-species fisheries that include monkfish and the proposed bycatch trip limits were anticipated to cause unacceptably high discarding. No positive comments were given at the 1997 public hearings.

3. Non-preferred Alternative 2 - Mixed catch trip limits and quota-controlled limited access fishery

See Volume I, Section 8.1.4.4.2 of the Monkfish FMP/EIS. Alternative 2 was an attempt to increase the bycatch trip limits and accommodate incidental catches of monkfish in fisheries that targeted a mixed catch where monkfish was a component. The Councils rejected Alternative 2 because it relied too heavily on trip limits to manage the fishery and had unacceptably low directed fishery quotas.

4. Non-preferred Alternative 4 - Days-at-sea effort control

See Volume I, Section 8.1.4.4.3 of the Monkfish FMP/EIS. Alternative 4 is a modification of DAS management proposed by Alternative 3, but with lower incidental catch allowances to boost the allocation of monkfish to the limited access fishery. The added allocation would enable the Councils to allocate some days to all vessels that qualify for monkfish limited access while meeting the mortality goals of the FMP. Some favorable comments for Alternative 4 were received at public hearings, but the overwhelming majority of people supported Alternative 3. The Councils ultimately rejected Alternative 4 because the DAS allocated to limited access vessels were too low and the bycatch trip limits would create unacceptable discarding.

5. Non-preferred Alternative 3a

See Volume I, Section 8.1.4.2.2 of the Monkfish FMP/EIS. This alternative is evaluated and analyzed in the EIS. Alternative 3a was expected to achieve similar mortality reductions to the preferred alternative, but discards were estimated to be higher in the NFMA and substantially higher in the SFMA.

6. Non-preferred Alternative 3b

See Volume I, Section 8.1.4.2.3 of the Monkfish FMP/EIS. This alternative is evaluated and analyzed in the EIS. Alternative 3b was expected to achieve similar mortality reductions to the

preferred alternative, but discards were estimated to be higher in the NFMA and substantially higher in the SFMA.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

This rule contains 19 new collection-of-information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by the OMB, and the OMB control numbers and public reporting burden are listed as follows:

Limited access monkfish permits, including four new permit categories, OMB# 0648-0202, (30 minutes/response). In subsequent years, permit renewal, OMB# 0648-0202, (15 minutes/response). Some applicants need to provide documentation of eligibility, OMB# 0648-0202, (1 hour/response)

Monkfish incidental catch permits, OMB# 0648-0202, (30 minutes/response). In subsequent years, permit renewal, OMB# 0648-0202, (15 minutes/response).

Permit appeals, OMB# 0648-0202, (180 minutes/response).

Vessel replacement, OMB# 0648-0202, (180 minutes/response).

Vessel upgrade, OMB# 0648-0202, (180 minutes/response).

Retention of vessel history, OMB# 0648-0202, (30 minutes/response).

Operator permit, OMB# 0648-0202, (60 minutes/response).

Dealer permit, OMB# 0648-0202, (5 minutes/response).

Dealer landing report, OMB# 0648-0202, (5 minutes/response(trip)).

Dealer employment report, OMB# 0648-0202, (2 minutes/response).

Gillnet designation-declaration into the gillnet fishing category, OMB# 0648-0202, (10 minutes/response).

Call-in, call-out (DAS reporting), OMB# 0648-0202, (2 minutes/response).

Area declaration for identifying compliance with the differential size limit beginning May 1, 2000, OMB# 0648-0202, (3 minutes/response).

Notification of transiting, OMB# 0648-0202, (1 minute/response if made with hail, 3 minutes/response if separate call).

Vessel trip reports, OMB# 0648-0202, (5 minutes/response).

Hail weight reports, OMB# 0648-0202, (3 minutes/response).

Net tagging requirements, OMB# 0648-0202, (1 minute to attach 1 tag, 2

minutes to notify of lost tags and request replacement).

Good Samaritan credits, OMB# 0648-0202, (30 minutes/response).

Declarations of blocks of time out of the fishery, OMB# 0648-0202, (3 minutes/response).

Public comment is sought regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these reporting burden estimates or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

A formal section 7 consultation under the ESA was initiated for the Monkfish FMP based on information provided in the FEIS; a separate Biological Assessment that was submitted on September 23, 1998; Supplement 1 to the Monkfish FMP, which contains a revised RFA submitted on October 23, 1998; NMFS's proposed rule under the Magnuson-Stevens Act; NMFS entanglement data; and other relevant sources. In a biological opinion (BO) dated December 21, 1998, the Assistant Administrator for Fisheries, NMFS, determined that fishing activities conducted under the Monkfish FMP and its implementing regulations are not likely to jeopardize the continued existence of threatened or endangered species or designated critical habitat. The final rule is virtually identical to the measures analyzed in the December 21, 1998, BO and thus the BO is still applicable.

Potential adverse impacts to marine mammals resulting from fishing activities conducted under this FMP are discussed in the EIS, which focuses on potential impacts to harbor porpoise, right whales, and humpback whales. The monkfish sink gillnet fishery is subject to regulation under the harbor porpoise and large whale take reduction plans. The measures contained in the Harbor Porpoise and Large Whale Take Reduction Plans are expected to reduce the take of marine mammals in this fishery to acceptable levels within six months of plan implementation and to within levels approaching a zero mortality or serious injury rate within 5 years.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 30, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 648, chapter VI, are amended as follows:

15 CFR Chapter IX

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) is amended by adding under 50 CFR the following entries in numerical order:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

*	*	*	*	*
(b) * * *				
CFR part or section where the information collection requirement is located			Current OMB control number (all numbers begin with 0648—)	
<hr/>				
*	*	*	*	*
50 CFR				
*	*	*	*	*
648.91			—0202	
648.92			—0202	
648.93			—0202	
648.94			—0202	
648.96			—0202	
*	*	*	*	*

50 CFR Chapter VI

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 § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the

Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies and monkfish fisheries (NE Multispecies FMP) and (Monkfish FMP); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); and the Atlantic bluefish fishery (Atlantic Bluefish FMP). * * *

3. In § 648.2, the definitions for "Monkfish or anglerfish", "Out of the multispecies fishery or DAS program", and "Tied up to the dock" are removed; the definitions for "Day(s)-at-Sea (DAS)", "Fishing year", "Prior to leaving port", "Sink gillnet or bottom-tending gillnet", "Upon returning to port", and "Vessel Monitoring System (VMS)" are revised; and the definitions for "Councils", "Monkfish", "Monkfish gillnets", "Monkfish Monitoring Committee", "Out of the monkfish fishery", "Out of the multispecies fishery", and "Tied up to the dock or tying up at a dock" are added alphabetically to read as follows:

§ 648.2 Definitions.

Councils, with respect to the monkfish fishery, means the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC).

Day(s)-at-Sea (DAS), with respect to the NE multispecies and monkfish fisheries, and Atlantic sea scallop fishery, except as described in § 648.82(k)(1)(iv), means the 24-hour period of time or any part thereof during which a fishing vessel is absent from port to fish for, possess, or land, or fishes for, possesses, or lands, regulated species, monkfish, or scallops.

Fishing year means:

- (1) For the Atlantic sea scallop fishery, from March 1 through the last day of February of the following year.
- (2) For the NE multispecies and monkfish fisheries, from May 1 through April 30 of the following year.
- (3) For all other fisheries in this part, from January 1 through December 31.

Monkfish, also known as *anglerfish* or *goosefish*, means *Lophius americanus*. *Monkfish gillnets* means gillnet gear with mesh size no smaller than 10-inches (25.4 cm) diamond mesh that is designed and used to fish for and catch

monkfish while fishing under a monkfish DAS.

Monkfish Monitoring Committee means a team of scientific and technical staff appointed by the NEFMC and MAFMC to review, analyze, and recommend adjustments to the management measures. The team consists of staff from the NEFMC and the MAFMC, NMFS Northeast Regional Office, NEFSC, the USCG, two fishing industry representatives selected by their respective Council chairman (one from each management area with at least one of the two representing either the Atlantic sea scallop or northeast multispecies fishery), and staff from affected coastal states, appointed by the Atlantic States Marine Fisheries Commission. The Chair is elected by the Committee from within its ranks, subject to the approval of the Chairs of the NEFMC and MAFMC.

Out of the monkfish fishery means the period of time during which a vessel is not fishing for monkfish under the monkfish DAS program.

Out of the multispecies fishery means the period of time during which a vessel is not fishing for regulated species under the NE multispecies DAS program.

Prior to leaving port, with respect to the call-in notification system for the Atlantic sea scallop, NE multispecies, and monkfish fisheries, 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.

Sink gillnet or bottom-tending gillnet means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near, the bottom in the lower third of the water column.

Tied up to the dock or tying up at a dock means tied up at a dock, on a mooring, or elsewhere in a harbor.

Upon returning to port, means, for purposes of the call-in notification system for the NE multispecies and monkfish fisheries, upon first tying up at a dock at the end of a fishing trip.

Vessel Monitoring System (VMS) means a vessel monitoring system or VMS unit as set forth in § 648.9 and approved by NMFS for use by Atlantic sea scallop, NE multispecies, and monkfish vessels, as required by this part.

4. In § 648.4, paragraph (a)(9) is added to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(9) *Monkfish vessels*. Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid monkfish permit to fish for, possess, or land any monkfish in or from the EEZ.

(i) *Limited access monkfish permits (effective November 8, 1999. (A)*

Eligibility. A vessel may be issued a limited access monkfish permit if it meets any of the following limited access monkfish permits criteria:

(1) *Category A permit (vessels without multispecies or scallop limited access permits)*. The vessel landed $\geq 50,000$ lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(2) *Category B permit (vessels less than 51 gross registered tonnage (GRT) without multispecies or scallop limited access permits that do not qualify for a Category A permit)*. The vessel landed $\geq 7,500$ lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(3) *Category C permit (vessels with multispecies or scallop limited access permits)*. The vessel landed $\geq 50,000$ lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995; or

(4) *Category D permit (all vessels with multispecies limited access permits and vessels less than 51 GRT with scallop limited access permits that do not qualify for a Category C permit)*. The vessel landed $\geq 7,500$ lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995.

(B) *Application/renewal restrictions*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restrictions*. (1) See paragraph (a)(1)(i)(C) of this section.

(2) *Vessels under agreement for construction or under reconstruction*. A vessel may be issued a limited access monkfish permit if the vessel was under written agreement for construction or reconstruction between February 28, 1994, and February 27, 1995, and such vessel meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(D) *Change in ownership*. (1) See paragraph (a)(1)(i)(D) of this section.

(2) A vessel may be issued a limited access monkfish permit if it was under

written agreement for purchase as of February 27, 1995 and meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(E) *Replacement vessels.* (1) See paragraph (a)(1)(i)(E) of this section.

(2) A vessel ≥ 51 GRT that lawfully replaced a vessel < 51 GRT between February 27, 1995, and October 7, 1999, that meets the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(2) or (4) of this section, may qualify for and fish under the permit category for which the replaced vessel qualified.

(3) A vessel that replaced a vessel that fished for and landed monkfish between February 28, 1991, and February 27, 1995, 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 paragraph (a)(9)(i)(A)(1), (2), (3), or (4) 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 provisions in paragraph (a)(1)(i)(D) of this section.

(F) *Upgraded vessel.* (1) See paragraph (a)(1)(i)(F) of this section.

(2) A vessel ≥ 51 GRT that upgraded from a vessel size < 51 GRT between February 27, 1995, and October 7, 1999, that meets any of the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraphs (a)(9)(i)(A)(2) and (4) of this section, may qualify for and fish under the permit category of the smaller vessel.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specification.* See paragraph (a)(1)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* A limited access monkfish permit may not be issued to a vessel or to its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(M) *Notification of eligibility for 1999.* (1) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available that they

meet the qualification criteria described in paragraph (a)(9)(i)(A)(1), (2), (3), or (4) of this section and that they qualify for a limited access monkfish permit. Vessel owners must still apply within 12 months of the effective date of these regulations to complete the qualification requirements.

(2) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access monkfish 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 permit within 12 months of the effective date of these regulations by submitting evidence that the vessel meets the requirements described in paragraph (a)(9)(i)(A)(1), (2), (3), or (4) of this section.

(N) *Appeal of denial of permit.* (1) Any applicant denied a limited access monkfish 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 in paragraph (a)(9)(i)(A)(1), (2), (3), or (4) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation to the Regional Administrator. The Regional Administrator's decision on the appeal is the final decision of the Department of Commerce.

(3) *Status of vessels pending appeal.*

(i) A vessel denied a limited access monkfish 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 Regional Administrator will issue such a letter for the pendency of any appeal, which decision is the final administrative action of the Department of Commerce pending a final decision on the appeal. 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 authorizing letter shall become invalid 5 days after receipt of the notice of denial. If the appeal is finally 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 permits effective November 8, 1999.* A vessel of the United States that is subject to these regulations and that has not been issued a limited access monkfish permit is eligible for and may be issued a monkfish incidental catch permit to fish for, possess, or land monkfish subject to the restrictions in § 648.94(c).

(ii) [Reserved]

* * * * *

5. In § 648.5, the first sentence of paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18 kg), NE multispecies, monkfish, mackerel, squid, butterfish, scup, or black sea bass, harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section, and carry on board, a valid operator's permit. * * *

* * * * *

6. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, monkfish, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, or black sea bass dealers, and surf clam and ocean quahog processors, must have been issued under this section, and have in their possession, a valid dealer and/or processor permit for these species.

* * * * *

7. In § 648.7, the first sentence of paragraph (a)(1)(i), the first sentence of paragraph (a)(3)(i), and paragraph (b)(1)(i) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(i) All NE multispecies or monkfish, sea scallop, summer flounder, mackerel, squid, and butterfish, scup, or black sea bass dealers must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for

trip from which fish are landed or received; dates of purchases; pounds by all species purchased (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; and any other information deemed necessary by the Regional Administrator. * * *

* * * * *

(3) * * *

(i) All NE multispecies or monkfish, sea scallop, summer flounder, mackerel, squid, and butterfish, scup, or black sea bass dealers must complete the "Employment Data" section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. * * *

* * * * *

(b) * * *

(1) * * *

(i) The owner or operator of any vessel issued a vessel permit for summer flounder, mackerel, squid, or butterfish, scup, or black sea bass, or a permit for sea scallops, or NE multispecies or monkfish, must maintain on board the vessel and submit an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. At least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species (or count, if a party or charter vessel) of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

* * * * *

8. In § 648.9, paragraph (d) is revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(d) *Presumption.* If a VMS unit fails to transmit an hourly signal of a vessel's

position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or NE multispecies or monkfish fishery, as applicable, or was not at sea.

* * * * *

9. In § 648.10, the first sentence of paragraph (b) introductory text, and paragraphs (b)(1), (c) introductory text, (c)(2), and (c)(5) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) *VMS Notification.* A multispecies vessel issued an Individual DAS or Combination Vessel permit, or scallop vessel issued a full-time or part-time limited access scallop permit, or scallop vessel fishing under the small dredge program specified in § 648.51(e), or a vessel issued a limited access multispecies or monkfish permit, or scallop permit, whose owner elects to fish under the VMS notification of paragraph (b) of this section, unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a). * * *

(1) Vessels that have crossed the VMS Demarcation Line specified under paragraph (a) of this section are deemed to be fishing under the DAS program, unless the vessel's owner or an authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port.

* * * * *

(c) *Call-in notification.* Owners of vessels issued limited access multispecies or monkfish permits who are participating in a DAS program and who are not required to provide notification using a VMS, scallop vessels qualifying for a DAS allocation under the occasional category and who have not elected to fish under the VMS notification requirements of paragraph (b) of this section, and vessels fishing pending an appeal as specified in § 648.4(a)(1)(i)(M)(3) and (a)(9)(i)(N)(3) are subject to the following requirements:

* * * * *

(2) The vessel's confirmation numbers for the current and immediately prior multispecies or monkfish fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

* * * * *

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the multispecies DAS program and call-in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, and any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c), shall be deemed in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

* * * * *

10. In § 648.11, the first sentence of paragraph (a) and paragraph (e) introductory text are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel with a permit for sea scallops, or NE multispecies or monkfish, or mackerel, squid, or butterfish, or scup, or black sea bass, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. * * *

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, or a scup moratorium permit, or a black sea bass moratorium permit, if requested by the sea sampler/observer also must:

* * * * *

11. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General Provisions), B (Atlantic Mackerel, Squid, and Butterfish Fisheries), D (Atlantic Sea Scallop Fishery), E (Atlantic Surf Clam and Ocean Quahog Fisheries), F (NE Multispecies and Monkfish Fisheries), G (Summer Flounder Fishery), H (Scup Fishery), or I (Black Sea Bass Fishery) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that

subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, and butterfish, summer flounder, scup, and black sea bass fisheries.

* * * * *

12. In § 648.14, paragraphs (a)(49) and (103) are revised, and paragraphs (x)(8) and (y) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(49) Violate any of the possession or landing restrictions on fishing with scallop dredge gear specified in §§ 648.80(h) and 648.94.

* * * * *

(103) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than solely for transport, any multispecies or monkfish, unless the dealer or transferee has a dealer permit issued under § 648.6.

* * * * *

(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.

(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 issued a limited access monkfish permit 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 this part and the operator on board such vessel has been issued an operator permit that is on board the vessel; or

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

(iii) The monkfish were harvested in or from the EEZ by a vessel engaged in recreational fishing.

(2) Land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, monkfish from one vessel to another vessel, unless each vessel has not been issued a monkfish permit and fishes exclusively in state waters.

(3) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, any monkfish, unless the vessel has been issued a monkfish permit, or unless the monkfish were harvested by a vessel with no monkfish

permit that fishes for monkfish exclusively in state waters.

(4) Fish for, possess, retain, or land monkfish, or operate or act as an operator of a vessel fishing for or possessing monkfish in or from the EEZ without having been issued and possessing a valid operator permit.

(5) Fish with, use, or have on board, while fishing under a monkfish DAS within the Northern Fishery Management Area or Southern Fishery Management Area as described in § 648.91(a) and (b), nets with mesh size smaller than the minimum mesh size specified in § 648.91(c).

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

(7) Possess, land, or fish for monkfish while in possession of dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, except for vessels with no monkfish permit that fish for monkfish exclusively in state waters.

(8) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, monkfish in excess of the possession or trip limits specified in § 648.94 as is applicable to a vessel issued a monkfish limited access or incidental catch permit.

(9) Fail to comply with the monkfish size limit restrictions of § 648.93.

(10) Fail to comply with the monkfish liver landing restrictions of § 648.94(d).

(11) Fish for, possess or land monkfish as specified in § 648.94 or when not participating in the monkfish DAS program pursuant to § 648.92.

(12) If carrying a VMS unit under § 648.10:

(i) Fail to have a certified, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VMS usage as specified in § 648.10.

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

(14) Fish for, possess, or land monkfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(9)(i)(E) and (F).

(15) Fish for, possess, or land monkfish with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(9)(i)(E) and (F).

(16) Fail to comply with any provision of the DAS notification program as specified in § 648.10.

(17) If the vessel has been issued a 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) If the vessel is fishing under the gillnet category, fail to comply with the applicable restrictions and requirements specified in § 648.92(b)(8).

(19) Fail to produce, or cause to be produced, gillnet tags when requested by an authorized officer.

(20) Tag a gillnet or use a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel, or use a false gillnet tag.

(21) Sell, transfer, or give away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

13. Revise the heading for subpart F to read as follows:

Subpart F—Management Measures for the NE Multispecies and Monkfish Fisheries

14. In § 648.80, the section heading, paragraphs (a)(4)(i)(A), (a)(7)(iv)(B), (a)(8)(i), (a)(9)(i)(D), and (b)(3)(ii) are revised to read as follows:

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

* * * * *

(a) * * *

(4) * * *

(i) * * *

(A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a letter of authorization issued by the Regional Administrator on board and may not fish for, possess on board, or land any species of fish other than whiting, except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; mackerel; dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

* * * * *

(7) * * *

(iv) * * *

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species

on board or as specified by § 648.94(c)(3), (4), (5) or (6), as applicable, whichever is less.

* * * *

(8) * * *

(i) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(8)(iv) or (a)(3)(ii) of this section, from July 15 through November 15 when fishing in Small Mesh Area 1 and from January 1 through June 30 when fishing in Small Mesh Area 2, except as specified in paragraph (a)(8)(ii) and (a)(8)(iii) of this section. A vessel may not fish for, possess on board, or land any species of fish other than: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following allowable incidental species (bycatch as the term is used elsewhere in this part), with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502)):

Small Mesh Area 1

Point	N. lat.	W. long.
SM1	43 deg.03'	70 deg.27'
SM2	42 deg.57'	70 deg.22'
SM3	42 deg.47'	70 deg.32'
SM4	42 deg.45'	70 deg.29'
SM5	42 deg.43'	70 deg.32'
SM6	42 deg.44'	70 deg.39'
SM7	42 deg.49'	70 deg.43'
SM8	42 deg.50'	70 deg.41'
SM9	42 deg.53'	70 deg.43'
SM10	42 deg.55'	70 deg.40'
SM11	42 deg.59'	70 deg.32'
SM1	43 deg.03'	70 deg.27'
SM13	43 deg.05.6'	69 deg.55.0'
SM14	43 deg.10.1'	69 deg.43.3'
SM15	42 deg.49.5'	69 deg.40.0'
SM16	42 deg.41.5'	69 deg.40.0'
SM17	42 deg.36.6'	69 deg.55.0'
SM13	43 deg.05.6'	69 deg.55.0'

* * * *

(9) * * *

(i) * * *

(D) The following species may be retained, with the restrictions noted, as

allowable bycatch species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to two standard totes; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

* * * *

(b) * * *

(3) * * *

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (b)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (b)(2)(i) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea ravens; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

* * * *

15. Revise the heading of § 648.81 to read as follows:

§ 648.81 Multispecies closed areas.

16. Revise the heading of § 648.82 to read as follows:

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

17. Revise the heading of § 648.83 to read as follows:

§ 648.83 Multispecies minimum fish sizes.

18. In § 648.84, paragraph (a) is revised to read as follows:

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of, or fishing for NE multispecies or monkfish, must have the name of the owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

* * * *

19. Revise the heading of § 648.86 to read as follows:

§ 648.86 Multispecies possession restrictions.

20. Revise the heading of § 648.88 to read as follows:

§ 648.88 Multispecies open access permit restrictions.

21. In § 648.90, the section heading and paragraph (c) are revised to read as follows:

§ 648.90 Multispecies framework specifications.

* * * *

(c) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

22. Section 648.95 is added and reserved, §§ 648.91 through 648.94, and § 648.96 are added to subpart F to read as follows:

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

All vessels fishing for, possessing or landing monkfish must comply with the following minimum mesh size, gear, and methods of fishing requirements, unless otherwise exempted or prohibited:

(a) *Northern Fishery Management Area (NFMA)—Area definition.* The NFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at the intersection of 70° W. longitude and the south-facing shoreline of Cape Cod, MA (point A), then southward along 70° W. longitude to 41° N. latitude, then eastward to the U.S.-Canada maritime boundary, then in a northerly direction along the U.S.-Canada maritime boundary until it intersects the Maine shoreline, and then following the

coastline in a southerly direction until it intersects with point A.

(b) *Southern Fishery Management Area (SFMA)—Area definition.* The SFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at point A, then in a southerly direction to the NC-SC border, then due east to the 200-mile limit, then in a northerly direction along the 200-mile limit to the U.S.-Canada maritime boundary, then in a northwesterly direction along the U.S.-Canada maritime boundary to 41° N. latitude, and then westward to 70° W. longitude, and finally north to the shoreline at Cape Cod, MA (point A).

(c) *Gear restrictions—(1) Minimum mesh size—(i) Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(ii) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4 cm) square or 12-inch (30.5 cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified by § 648.80(a)(2)(i), (b)(2)(i), or (c)(2)(i) of the Northeast multispecies regulations, depending upon and consistent with the multispecies regulated mesh area being fished.

(ii) *Trawl nets while on a monkfish and multispecies DAS.* For vessels issued a Category C or D limited access monkfish permit and fishing with trawl gear under both a monkfish and multispecies DAS, the minimum mesh size is that allowed under regulations governing mesh size for the NE Multispecies FMP at § 648.80(a)(2)(i), (b)(2)(i), or (c)(2)(i), depending upon and consistent with the multispecies regulated mesh area being fished.

(iii) *Gillnets while on a monkfish DAS.* The minimum mesh size for any gillnets used by a vessel fishing under a monkfish DAS is 10-inches (25.4 cm) diamond mesh.

(iv) *Authorized gear while on a monkfish and scallop DAS.* Vessels issued a Category C or D 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.

(2) *Other gear restrictions.* (i) A vessel may not fish with dredges or have dredges on board while fishing under a monkfish DAS.

(ii) All other non-conforming gear must be stowed as specified in § 648.81(e).

(iii) The mesh size restrictions in paragraph (c)(1) of this section do not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft² (0.81 m²)).

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

(a) *General.* A vessel issued a limited access monkfish permit may not fish for, possess, retain, or land monkfish, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, except as otherwise provided in this part.

(1) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(I) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 unused DAS into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

(2) *(Reserved)*

(b) *Monkfish DAS program—permit categories and allocations—(1) Limited access monkfish permit holders.* For fishing years 1999, 2000, and 2001, all limited access monkfish permit holders shall be allocated 40 monkfish DAS for each fishing year. Multispecies and scallop limited access permit holders who also qualify for a limited access monkfish permit shall be allocated up to 40 monkfish DAS for each fishing year, depending on whether they have sufficient multispecies and/or scallop DAS to use concurrently with their monkfish DAS, as required by paragraph (b)(2) of this section. For fishing years 2002 and thereafter, no monkfish DAS will be allocated to any limited access monkfish permit holder.

(2) *Category C and D limited access monkfish permit holders.* Each monkfish DAS used by a limited access multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a multispecies or scallop DAS, as applicable.

(3) *Accrual of DAS.* Same as § 648.53(e).

(4) *Good Samaritan credit.* Same as § 648.53(f).

(5) *Spawning season restrictions.* Beginning January 1, 2000, a vessel issued a valid Category A or B limited access monkfish permit under § 648.4(a)(9)(i)(A)(1) or (a)(9)(i)(A)(2) must declare and be out of the monkfish DAS program, as described in paragraph

(b) of this section, for a continuous 20-day period between April 1 and June 30 of each calendar year using the notification requirements specified in § 648.10. If a vessel owner has not declared and been out for a continuous 20-day period between April 1 and June 30 of each calendar year on or before June 11 of each year, the vessel is prohibited from fishing for possessing or landing any monkfish during the period June 11 through June 30, inclusive.

(6) *Declaring monkfish DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the monkfish DAS program and declaration of its continuous 20-day period out of the monkfish DAS program, using the notification requirements specified in § 648.10.

(7) *Adjustments in annual monkfish DAS allocations.* Adjustments in annual monkfish DAS allocations, if required to meet fishing mortality goals, may be implemented pursuant to the framework adjustment procedures of § 648.96.

(8) *Gillnet restrictions—(i) Number and size of nets.* A vessel issued a monkfish limited access permit or fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 160 gillnets. A vessel issued a multispecies limited access permit and a limited access monkfish permit, or fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 160 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82(k)(1)(i) and that the nets are tagged in accordance with the regulations, as specified in § 648.82. Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

(ii) *Tagging requirements.* Beginning May 1, 2000, all gillnets fished, hauled, possessed, or deployed by a vessel fishing for monkfish under a monkfish DAS must have one monkfish tag per net, with one tag secured to every other bridle of every net within a string of nets. Tags must be obtained as described in § 648.4. A vessel operator must account for all net tags upon request by an authorized officer.

(iii) *Lost tags.* A vessel owner or operator must report lost, destroyed, or missing tag numbers by letter or fax to the Regional Administrator within 24 hours after tags have been discovered lost, destroyed, or missing.

(iv) *Replacement tags.* A vessel owner or operator seeking replacement of lost, destroyed, or missing tags must request replacement tags by letter or fax to the Regional Administrator. A check for the

cost of the replacement tags must be received before the tags will be re-issued.

(v) *Method of counting DAS.* A vessel fishing with gillnet gear under a monkfish DAS will accrue 15 hours monkfish DAS for each trip greater than 3 hours but less than or equal to 15 hours. Such vessel will accrue actual monkfish DAS time at sea for trips less than or equal to 3 hours or greater than 15 hours. A vessel fishing with gillnet gear under only a monkfish DAS is not required to remove gillnet gear from the water upon returning to the dock and calling out of the DAS program, provided that the vessel complies with the requirements and conditions of paragraphs (b)(8)(i), (ii), (iii), (iv), and (v) of this section.

§ 648.93 Monkfish minimum fish sizes.

(a) *Minimum fish sizes.* (1) All monkfish caught in or from the EEZ or by vessels issued a Federal monkfish permit must meet the following minimum fish size requirements (total length and tail length) unless such minimum fish sizes are adjusted pursuant to paragraph (b) of this section:

MINIMUM FISH SIZES

(Total Length/Tail Length)

Total Length	Tail Length
17 inches (43.2 cm)	11 inches (27.9 cm)

(2) The minimum fish size applies to the whole fish (total length) or to the tail of a fish (tail length) at the time of landing. Fish or parts of fish, with the exception of cheeks and livers, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed. Monkfish tails are measured from the anterior portion of the fourth cephalic dorsal spine to the end of the caudal fin. Any tissue anterior to the fourth dorsal spine is ignored. If the fourth dorsal spine or the tail is not intact, the minimum size is measured between the most anterior vertebra and the most posterior portion of the tail.

(b) *Adjustments*—(1) *Vessels fishing in the SFMA.* (i) Unless the Regional Administrator makes the determination specified in paragraph (b)(1)(ii), beginning on May 1, 2000, the minimum fish size limit for vessels fishing in the SFMA, or for vessels not declared into the NFMA, is 21 inches

(53.3 cm) total length/14 inches (35.6 cm) tail length.

(ii) If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch for the period May 1, 1999, through April 30, 2000, is less than or equal to the Year 1 SFMA TAC, a notification will be published in the **Federal Register** specifying the minimum monkfish size limit of 17 inches (43.2 cm) total length/11 inches (27.9 cm) tail length for vessels fishing for, catching, or landing monkfish in the SFMA.

(2) *Vessels fishing in the NFMA.* An adjustment to the minimum size possession limits for vessels fishing for, catching, or landing fish in the SFMA under paragraph (b)(1) of this section will not affect the minimum size possession limits for vessels fishing for or landing monkfish in the NFMA, which will remain as described in paragraph (a)(1) of this section. If the size limits specified in paragraph (b)(1) of this section become effective for the SFMA, a vessel intending to fish for and catch monkfish under a monkfish DAS only in the NFMA must declare into that area for a period not less than 30 days when calling in under the DAS program or as otherwise directed by the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. Such restrictions shall apply to the entire trip. 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.

§ 648.94 Monkfish possession and landing restrictions.

(a) *General.* Monkfish may be possessed or landed either as tails only, or in whole form, or any combination of the two. When both tails and whole fish are possessed or landed, the possession or landing limit for monkfish tails shall be the difference between the whole weight limit minus the landing of whole monkfish, divided by 3.32. A 996 lb (452 kg) whole weight trip limit and a 600 lb (272 kg) landing of whole fish shall, for example, allow for a maximum landing of tails of 119.3 lb (54.1 kg).

(b) *Vessels issued limited access monkfish permits*—(1) *Vessels fishing under the monkfish DAS program prior to May 1, 2000.* For vessels fishing under the monkfish DAS program prior

to May 1, 2000, there is no monkfish trip limit.

(2) *Vessels fishing under the monkfish DAS program May 1, 2000, and thereafter.* (i) Unless the Regional Administrator makes the determination specified in paragraph (b)(2)(ii), the trip limits specified in paragraphs (b)(2)(iii), (iv), (v), and (vi) of this section apply to vessels fishing under the monkfish DAS program in the SFMA.

(ii) If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch for the period May 1, 1999, through April 30, 2000, is less than or equal to the Year 1 SFMA TAC, no monkfish trip limit shall apply to a vessel that is fishing under a monkfish DAS. Such determination shall be published in the **Federal Register**.

(iii) *Category A and C vessels using trawl gear.* Category A and C vessels exclusively using trawl gear during a monkfish DAS may land up to 1,500 lb (680 kg) tail-weight or 4,980 lb (2,259 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(iv) *Category B and D vessels using trawl gear.* Category B and D vessels using exclusively trawl gear during a monkfish DAS may land up to 1,000 lb (454 kg) tail-weight or 3,320 lb (1,506 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(v) *Vessels using gear other than trawl gear.* Any vessel issued a limited access monkfish permit and using gear other than trawl gear during a monkfish 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).

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

(3) *Category C and D vessels fishing during a multispecies DAS prior to May 1, 2002*—(i) *NFMA.* There is no monkfish trip limit for a Category C or D vessel that is fishing under a multispecies DAS exclusively in the NFMA.

(ii) *SFMA.* If any portion of a trip is fished only under a multispecies DAS, and not under a monkfish DAS, in the SFMA, the 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 if gear other than trawl gear is used during the trip.

(iii) *Transiting.* A vessel that harvested monkfish in the NFMA may transit the SFMA and possess monkfish in excess of the SFMA landing limit provided such vessel complies with the provisions of § 648.94(e).

(4) *Category C and D vessels fishing during a multispecies DAS from May 1, 2002, and thereafter—(i) NFMA.* Any Category C or D vessel that is fishing under a multispecies DAS in the NFMA may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent of the total weight of fish on board, whichever is less.

(ii) *SFMA.* If any portion of a trip is fished only under a multispecies DAS and not under a monkfish DAS in the SFMA, a vessel issued a Category C or D permit may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent of the total weight of fish on board, whichever is less, if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight if gear other than trawl gear is used during the trip.

(5) *Category C and D vessels fishing under the scallop DAS program prior to May 1, 2002.* A category C or D vessel fishing under a scallop DAS with a dredge on board, or under a net exemption provision as specified at § 648.51(f), 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).

(6) *Category C and D vessels fishing under the scallop DAS program from May 1, 2002, and thereafter.* A category C or D vessel fishing under a scallop DAS with a dredge on board may land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(7) *Category C and D Scallop Vessels Declared into the Monkfish DAS Program without a Dredge on Board.* Category C and D vessels that have declared into the Monkfish DAS Program and that do not fish with or have on board a dredge are subject to the same possession limits as specified at (b)(1) and (b)(2). 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.

(c) *Vessels issued a monkfish incidental catch permit—(1) Vessels fishing under a multispecies DAS—(i) NFMA.* Vessels issued a monkfish incidental catch permit fishing under a multispecies DAS exclusively in the NFMA 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), or 25 percent of the total weight of fish on board, whichever is less.

(ii) *SFMA.* If any portion of the trip is fished by a vessel issued a monkfish incidental catch permit under a 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 dredge vessels fishing under a scallop DAS—(i) Prior to May 1, 2002.* 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).

(ii) *From May 1, 2002, and thereafter.* A scallop dredge vessel issued a monkfish incidental catch permit fishing under a scallop DAS may land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(3) *Vessels not fishing under a monkfish, multispecies or scallop DAS—(i) Vessels fishing in the GOM/GB, SNE and MA Regulated Mesh Areas with large mesh.* A vessel issued a valid monkfish incidental catch permit and fishing in the GOM/GB or SNE RMAs with large mesh as defined in § 648.80(a)(2)(i) and (b)(2)(i), respectively, or fishing in the MA RMA with mesh no smaller than specified at § 648.104(a)(1), while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent of the total weight of fish on board.

(ii) [Reserved]

(4) *Vessels fishing with small mesh.* A vessel issued a valid monkfish incidental catch permit and fishing with mesh smaller than the mesh size specified by area in paragraph (c)(3) of this section, while not on a monkfish, 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 trip.

(5) *Small vessels.* A vessel issued a limited access multispecies permit and a valid monkfish incidental catch permit that is ≤ 30 feet (9.1 m) in length and that elects not to fish under the 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 trip, regardless of the weight of other fish on board.

(6) *Vessels fishing with handgear.* A vessel issued a valid monkfish incidental catch permit and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, 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 trip, regardless of the weight of other fish on board.

(d) *Monkfish liver landing restrictions.* (1) A vessel authorized to land monkfish under this part may possess or land monkfish livers up to 25 percent of the tail-weight of monkfish, or up to 10 percent of the whole weight of monkfish, per trip, except as provided under paragraph (d)(2) of this section.

(2) If a vessel possesses or lands both monkfish tails and whole monkfish, the vessel may land monkfish livers up to 10 percent of the whole weight of monkfish per trip using the following weight ratio:

$$(0.10) \times [(tail\ weight \times 3.32) + (whole\ fish \times 1)]$$

Note to paragraph (d)(2): The value 3.32 is the live weight conversion for tails and the value of 1 is the live weight conversion for fish landed in a whole condition.

(e) *Transiting.* A vessel that has declared into the NFMA for the purpose of fishing for monkfish, or a vessel that is subject to less restrictive measures in the NFMA, may transit the SFMA, provided that the vessel does not harvest or possess monkfish from the SFMA and that the vessel's fishing gear is properly stowed and not available for immediate use in accordance with § 648.81(e).

(f) *Area declaration.* Should the trip limits specified in paragraphs (b)(2)(iii), (iv), (v), and (vi) of this section be implemented under paragraph (b)(2) of this section, a vessel, in order to fish for monkfish under a monkfish DAS in the NFMA, must declare into that area for a period of not less than 30 days. A vessel that has not declared into the NFMA under this paragraph will be presumed to have fished in the SFMA under the more restrictive requirements of that area. Such restrictions will apply to the entire trip. A vessel that has declared its intent to fish in the NFMA may transit the SFMA, provided that it complies with the transiting provisions

described in paragraph (e) of this section.

(g) *Other landing restrictions.* Vessels are subject to any other applicable landing restrictions of this part.

§ 648.95 [Reserved]

§ 648.96 Monkfish framework specifications.

(a) *Annual review.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year 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.

(1) 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.

(2) Based on this review, the MFMC shall recommend target TACs and develop 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.

(3) The Councils shall review the recommended target TACs and all of the options developed by the MFMC and other relevant information, consider public comment, and develop a recommendation to meet the Monkfish FMP's objectives, consistent with other applicable law. 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. If the Councils do not submit a recommendation that meets the Monkfish FMP's objectives and 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 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.

(4) Based on this review, the Councils shall submit a recommendation to the Regional Administrator of any changes, adjustments, or additions to management measures necessary to achieve the Monkfish FMP's goals and objectives. The Councils' recommendation 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 or amendments for monkfish require majority approval of each Council for submission to the Secretary.

(5) 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 30-day public comment period. The Councils may instead submit their recommendation on or before February 1 if they choose to follow the framework process outlined in paragraph (c) 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 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 objectives and 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.

(6) If the Regional Administrator concurs in the Councils' recommendation, a final rule will be published in the **Federal Register** prior to each fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the Monkfish FMP's goals and objectives, the Regional Administrator may publish as a proposed rule one of the MFMC options reviewed and not rejected by either Council, provided that the option meets the Monkfish FMP's objectives and is consistent with other applicable law. If the Councils fail to submit a recommendation that meets the objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MFMC, unless it was rejected by either the New England or Mid-Atlantic Council, provided the option meets the objective and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action shall be published as a final rule in the **Federal Register**.

(b) *Three-year review of biological objectives and reference points.* The MFMC shall meet on or before November 15, 2001, to evaluate threshold and target biological reference points. If adjustments are required, a framework action shall be initiated to replace the existing ("default") measures scheduled to take effect on May 1, 2002 (Year 4). The framework process shall include a comprehensive evaluation, conducted by the MFMC during 2001, of the effectiveness of the management measures to reduce mortality below the overfishing threshold and allow rebuilding within (at that time) 6 years. If a change is required, the framework process shall follow the procedure described in paragraph (a) of this section, but may also include an adjustment of the overfishing definition.

(c) *Within season management action.* Either Council, or the joint Monkfish Oversight Committee (subject to the approval of the Councils chairmen), may at any time 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.

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. Management adjustments or amendments for monkfish shall require majority approval of each Council for submission to the Secretary.

(1) *Adjustment process.* After a management action has been initiated, the Councils must develop and analyze appropriate management actions over the span of 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. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: 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.

(2) *Adjustment process 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).

(3) *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:

(i) 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;

(ii) 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;

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

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

(4) *Action by NMFS.* If the Councils' recommendation to NMFS includes adjustments or additions to management measures and:

(i) If NMFS concurs with 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) of this section, then the measures shall be issued as a final rule in the **Federal Register**.

(ii) If NMFS 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**.

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

(d) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

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