

Accordingly, for reasons set forth in the preamble, title 48, chapter 6 of the Code of Federal Regulations is amended as follows:

#### Subchapter A—General

### PART 601—DEPARTMENT OF STATE ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for 48 CFR part 601 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 22 U.S.C. 2658.

■ 2. Section 601.603–3 is amended by revising paragraph (c) to read as set forth below:

#### 601.603–3 Appointment.

\* \* \* \* \*

(c) *Non-Federal employees.* Only United States Government employees shall be appointed as contracting officers. For acquisitions at \$25,000 and below only, this includes locally employed staff (*i.e.*, Foreign Service Nationals and Third Country nationals). Personal services contractors are not eligible for appointment as DOS contracting officers.

\* \* \* \* \*

Dated: May 19, 2011.

**Corey M. Rindner,**

*Procurement Executive, Bureau of Administration, Department of State.*

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### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 090225241–1233–03]

**RIN 0648–AX70**

#### Fisheries of the Northeastern United States; Monkfish; Amendment 5

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements measures that were approved in Amendment 5 to the Monkfish Fishery Management Plan (FMP). The New England and Mid-Atlantic Fishery Management Councils (Councils) developed Amendment 5 to bring the FMP into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act). This rule establishes the mechanisms for specifying ACLs and AMs and sets the annual catch target (ACT) and associated measures for days-at-sea (DAS) and trip limits for the Southern Fishery Management Area (SFMA). NMFS disapproved the proposed ACT, and associated measures, for the Northern Fishery Management Area (NFMA) on the grounds that they are not consistent with the most recent scientific advice. This final rule implements three additional Amendment 5 management measures to promote efficiency and reduce waste, brings the biological and management reference points in the Monkfish FMP into compliance with recently revised National Standard 1 (NS1) Guidelines, and makes one correction to the monkfish weight conversion factors.

**DATES:** Effective May 25, 2011.

**ADDRESSES:** An environmental assessment (EA) prepared for Amendment 5 at the time of its submission by the Councils describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. NMFS prepared an Addendum to the Amendment 5 EA for the purpose of analyzing the potential impacts of the amendment on Atlantic sturgeon. Copies of Amendment 5, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (NEFMC), 50 Water Street, Newburyport, MA 01950. Copies of the Addendum to Amendment 5 are available from Patricia A. Kurkul, Regional Administrator, NMFS, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available online at <http://www.nefmc.org>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Northeast Regional Office of NMFS at 55 Great Republic Drive, Gloucester, MA 01930, and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Allison McHale, Fishery Policy Analyst, (978) 281–9103; fax: (978) 281–9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

This final rule implements approved measures in Amendment 5, which was partially approved by NMFS on behalf

of the Secretary of Commerce (Secretary) on April 28, 2011. A proposed rule to implement the measures in Amendment 5 published in the **Federal Register** on March 3, 2011 (76 FR 11737), with public comment accepted through April 4, 2011. Details concerning the development of Amendment 5 were contained in the preamble of the proposed rule and are not repeated here.

A recent assessment of the monkfish resource was conducted during the first half of 2010 by the 50th Stock Assessment Review Committee (SARC 50). The full assessment report was released in August 2010 and can be found at <http://www.nefsc.noaa.gov/publications/crd/crd1017/>. The SARC 50 assessment concluded that both stocks are above their respective current biomass thresholds, and above the new biomass thresholds recommended by the assessment, indicating that both stocks are not overfished. Furthermore, the current estimated fishing mortality rate for each stock is below its respective fishing mortality threshold. Thus, overfishing is not occurring on either stock.

The 2010 assessment panel expressed serious concerns regarding the high levels of scientific uncertainty in the assessment results. The Monkfish Assessment Summary Report for 2010 states, “The assessment results continue to be uncertain due to cumulative effects of under-reported landings, unknown discards during the 1980s, uncertainty in survey indices, and incomplete understanding of key biological parameters such as age and growth, longevity, natural mortality and stock structure contributing to retrospective patterns primarily in the northern management area.” Unlike the Data Poor Working Group (DPWG) assessment conducted in 2007 (see Monkfish Assessment Summary Report at <http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0713/>), the 2010 assessment utilized projections to evaluate stock trends based on anticipated fishing levels. However, these projections are also considered highly uncertain because they are based on the outputs of the assessment model. Despite this uncertainty, the projections indicated that the NFMA is more vulnerable to overfishing or becoming overfished during 2011–2016 if total catches approach the acceptable biological catch (ABC) value of 17,485 mt in Amendment 5 that was based on the results of the DPWG assessment. Conversely, the SFMA was found to be less vulnerable based upon the ABC value of 13,326 mt in Amendment 5.

### Disapproved Measure

NMFS disapproved the proposed Amendment 5 ACT for the NFMA, and the specification of DAS and trip limits to achieve that ACT. The proposed NFMA ACT and specification of DAS and trip limits were included in Amendment 5 based on the recommended interim ABC, and assessments available at the time the amendment document was finalized by the Councils. Specifically, Amendment 5 proposed an ACT for the NFMA of 10,750 mt, an allocation of 40 DAS, and trip limits of 1,250 lb (567 kg) tail wt. per DAS for Category A and C vessels, and 800 lb (363 kg) tail wt. per DAS for Category B and D vessels. For the SFMA, Amendment 5 proposed an ACT of 11,513 mt, and allocation of 28 DAS, and trip limits of 550 lb (249 kg) tail wt. per DAS for Category A and C vessels, and 450 lb (204 kg) tail wt. per DAS for Category B and D vessels.

The results of SARC 50 became available after the Councils took final action on Amendment 5. In response to the new assessment, the New England Council's Scientific and Statistical Committee (SSC) revisited its previous ABC recommendation at a meeting in August 2010. The SSC, after much discussion concerning the uncertainty with the assessment and alternate methods for calculating ABC to account for this uncertainty, agreed to maintain the existing interim ABC approach it previously recommended. Using this interim ABC approach, the SSC recalculated the recommended ABCs to incorporate the results of SARC 50. Thus, based on this recalculation using the ABC control rule approved in Amendment 5, the ABCs are automatically revised to be 7,592 mt for the NFMA, and 12,316 mt for the SFMA. The result is a revised ABC for the NFMA that is 3,158 mt lower than the NFMA ACT of 17,485 mt in Amendment 5 that was calculated based on the 2007 DPWG Assessment, creating an inconsistency with the recalculated ABC. Based on this inconsistency, NMFS disapproved the DAS and trip limit specifications for the NFMA in Amendment 5. Disapproval of the SFMA specifications was not required because the recalculated ABC for the SFMA, even though lower than the Amendment 5 SFMA ABC of 13,326 mt, is still 803 mt higher than the Councils' recommended ACT for that area. Although this reduces the Amendment 5 recommended buffer percentage between the ACT and the ABC/ACL for the SFMA to only 6.5 percent, it still provides a sufficient buffer to account for management uncertainty in order to

ensure that catch does not exceed the ABC/ACL for this portion of the fishery. Therefore, NMFS determined that the Amendment 5 SFMA specifications for monkfish are still consistent with Magnuson-Stevens Act requirements.

Because it was too late for the Councils to revise Amendment 5 to reflect the new recommendations, in light of the need to get the amendment in place as quickly as possible in the new fishing year, the NEFMC initiated Framework Adjustment 7 (Framework 7) at its September 28–30, 2010, meeting to revise the disapproved ACT for the NFMA to be consistent with the recalculated ABC for the NFMA, and update the biomass (B) reference points of  $B_{\text{target}}$  and  $B_{\text{threshold}}$  in the FMP, that were not proposed for revision in Amendment 5, to be consistent with the results of SARC 50. In Framework 7, which was approved by the Councils in February 2011, the Councils recommend an NFMA ACT of 6,567 mt, an allocation of 40 DAS, and trip limits of 1,250 lb (567 kg) tail weight per DAS for limited access monkfish Category A and C vessels, and 600 lb (272 kg) tail weight per DAS for limited access monkfish Category B and D vessels. In the meantime, disapproval of the NFMA specifications leaves current measures in effect for the NFMA until they are superseded by a revised ACT and specification of DAS and trip limits under Framework 7, which is expected to be implemented during the summer of 2011.

The current NFMA measures, which will remain in place until Framework 7 is implemented, result in a lower TAL than was recommended by the Councils in the framework. Additionally, NFMA landings have been well below the TAL for the past 2 years (29 percent below in 2008, and 33 percent below in 2009). Thus, NMFS does not expect delaying action on the establishment of an ACT for the NFMA would result in landings exceeding the ACTs being considered in Framework 7 during the 2011 fishing year (FY), which began May 1, 2011. Because this final rule is being implemented after the start of FY 2011, any monkfish landings that occurred between May 1, 2011, and the time this final rule is effective will accrue against the 2011 ACT and be used to determine whether AMs are triggered.

### Approved Measures

#### 1. Control Rules for Establishing Biological and Management Reference Points

The biological and management reference points currently in the Monkfish FMP are used to determine if

overfishing is occurring on either stock ( $F_{\text{threshold}}$ ), if either stock is overfished ( $B_{\text{threshold}}$ ), or if either stock is rebuilt ( $B_{\text{target}}$ ). However, these reference points alone are not sufficient to comply with the Magnuson-Stevens Act and the recently updated National Standard (NS) 1 guidelines. As a result, Amendment 5 establishes control rules to specify maximum sustainable yield (MSY), optimum yield (OY), overfishing level (OFL), and ABC for each monkfish stock, outlined as follows:

- MSY shall be expressed as the product of the fishing mortality threshold, ( $F_{\text{threshold}}$ ), and the biomass target,  $B_{\text{target}}$ ;
- OY shall be set equivalent to the ACT, which is described under approved measure 4 below;
- OFL shall be expressed as the product of  $F_{\text{threshold}}$  and current exploitable biomass ( $B_{\text{current}}$ );
- ABC shall be expressed as the product of the average exploitation rate during the recent period of stable or increasing trend in biomass in both management units (determined to be 1999–2006 NFMA and 2000–2006 for SFMA) and the most recent estimate or index of exploitable biomass.

#### 2. ABC, ACL, and ACT Setting Process

This action establishes a framework for the establishment of ABCs and ACLs for each management area. As described under Approved Measure 1, this action implements a control rule for establishing the ABC that is to be based upon information from the most recent stock assessment, in this case SARC 50. This ABC control rule is based upon the calculation method recommended and approved by the SSC. If new information becomes available through a stock assessment, the ABCs will be recalculated based upon this new information, with subsequent review and approval by the SSC. If the SSC concurs with this recalculation, the ABCs for each management area will be automatically updated, requiring no further action by the Councils. However, if the SSC does not concur with the recalculation and recommends an alternative approach to calculating the ABCs, the Councils would be required to take action through the annual or in-season framework adjustment process in the FMP to update the ABCs based upon the SSC's recommended method.

Given that scientific uncertainty is incorporated into the calculation of the ABCs, as discussed under Approved Measure 3, the ACLs are set equivalent to the respective ABCs for each management area. Thus, like the ABCs, the ACLs are self-adjusting, based upon the best available science. Council

action would only be required if the SSC recommends an alternative method for calculating ABCs and/or ACLs for the monkfish fishery that differs from the control rules established in Amendment 5.

The specification of ACTs for each management area is conducted independently of the ABC/ACL calculation, but considers the size of the buffer between the proposed ACT and calculated ACL in the context of management uncertainty. This action requires that ACTs be established for each management area at some level below the calculated ABC/ACL. Although the Councils recommended establishing ACTs for 3 years in Amendment 5, it does not require that the ACTs be revised every 3 years. The Councils may, at any time, choose to revise the ACTs based on new information through either the annual review process or the framework adjustment process in the FMP, or specify ACTs in a future action for a different time period, that may be more or less than 3 years, as determined to be appropriate based upon the stock assessment schedule for this species and other relevant information.

### 3. ACLs

Amendment 5 requires ACLs for the two management areas to be set at a level equal to the SSC's recommended ABCs. Amendment 5 does not require a buffer between the ABC and the ACL because scientific uncertainty has been accounted for within the ABCs. The Councils determined in Amendment 5 that there was no technical basis for setting the ACLs for each management area below their respective ABCs. In its March 30, 2009, report, the SSC supported the Councils' ACL recommendation and noted that "the magnitude of recent catch has low risk of exceeding the OFL or the proposed interim ABC" since, in 2006, total catch was only 32 percent of the proposed OFL for the NFMA, and 34 percent of the proposed OFL for the SFMA; and total catch in 2007 was estimated by the Monkfish Plan Development Team (PDT) to be 24 percent of the proposed OFL for the NFMA, and 31 percent of the proposed OFL for the SFMA. The calculated ABCs/ACLs incorporating the results of the 2010 stock assessment are 7,592 mt for the NFMA, and 12,316 mt for the SFMA.

### 4. Proactive AM

This final rule institutes a proactive AM that establishes ACTs for each management area to account for management uncertainty. In Amendment 5, the Councils

recommended an ACT of 10,750 mt for the NFMA and 11,513 mt for the SFMA. This final rule implements the ACT recommended for the SFMA, but disapproves the ACT for the NFMA on the grounds that it is not consistent with the best scientific information available, as described under "Disapproved Measure" in this preamble.

### 5. Reactive AM

This final rule also establishes a reactive AM that requires the Council to deduct, through an in-season or annual framework adjustment, on a pound-for-pound basis, any overage of the ACL from the ACT in the year following the FY in which the overage was identified. Management measures (i.e., DAS and trip limits) must also be adjusted, if necessary, to ensure the revised ACT is not exceeded. For example, if overage of the 2011 ACL for the NFMA is determined to have occurred upon review of final 2011 landings sometime during FY 2012, the Councils would adjust the ACT and develop revised management measures for implementation during FY 2013.

Under this reactive AM, the Councils are responsible for assessing annual landings in relation to the ACL, and adjusting the ACT and associated management measures as required. However, if the Councils fail to take action, the Regional Administrator has the authority to adjust the ACT, and implement revised DAS and/or trip limits.

### 6. Specification of DAS and Trip Limits

This final rule specifies a DAS allocation and trip limits only for the SFMA because the ACT for the NFMA was disapproved. As stated previously in this preamble, the FY 2010 DAS allocation and trip limits for the NFMA will remain in effect until an updated ACT and associated DAS and trip limits are established through Framework 7, which is scheduled for implementation during the summer of 2011. The DAS allocation and trip limits for the SFMA recommended by the Councils in Amendment 5 and being implemented in this final rule are 28 DAS, and trip limits of 550 lb (249 kg) tail wt. per DAS for Category A and C vessels, and 450 lb (204 kg) tail wt. per DAS for Category B, D, and H vessels.

### 7. Automatic DAS Adjustment for Trip Limit Overage

This final rule implements a measure that allows vessels to land up to the equivalent of one additional daily monkfish trip limit than would otherwise be authorized based on the vessel's monkfish DAS usage for that

trip, provided the vessel notifies NMFS of the overage via vessel monitoring system (VMS) prior to crossing the VMS demarcation line, or via phone using the Agency's interactive voice response (IVR) system at least 1 hr prior to landing. To account for the trip limit overage, the vessel's monkfish DAS charge shall be increased to the next 24-hr period plus 1 minute. For example, if a limited access monkfish Category C vessel fishing in the SFMA has two monkfish trip limits (i.e., 1,100 lb (499 kg) tail weight) on board, but has only been declared into the monkfish DAS program for 15 hrs, the vessel may land the additional trip limit, if NMFS is properly notified. The vessel's monkfish DAS charge would then be adjusted from 15 hrs to 24 hrs and 1 minute.

In order to effectively implement this provision, NMFS has added a form to the VMS system that a vessel operator would complete and send to NMFS prior to crossing the VMS demarcation line on the vessel's return to port. With respect to recommendation in Amendment 5 that vessels not equipped with a VMS unit call-in a trip limit overage when outside the VMS demarcation line, NMFS recognizes that it may not be feasible for all vessels to provide a call-in notification via cell phone when outside the VMS demarcation line. Accordingly, in this final rule, NMFS, pursuant to its Magnuson-Stevens Act section 305(d) authority revises the Councils' recommendation by requiring vessels without VMS to notify NMFS of the trip limit overage by calling into the IVR system at least 1 hour prior to landing.

### 8. Authorization To Land Monkfish Heads

This final rule implements a measure that authorizes the landing of monkfish heads separately from the body by listing monkfish heads as an authorized product form under § 648.94(a), and establishing an appropriate head-to-total weight conversion factor to aid enforcement of the daily trip limits. Vessels may land monkfish heads separate from the body, provided the total weight of heads does not exceed the appropriate total weight of tails on board (see "Technical Amendment" below for details on the conversion factors).

### 9. Allow Changes to Monkfish Research Set-Aside (RSA) Program via Framework Action

This final rule authorizes changes to be made to this RSA program through a framework adjustment in order to make necessary improvements to this program in a timelier manner. The Councils are

still required to conduct the necessary environmental analysis under the National Environmental Policy Act (NEPA), and to comply with other applicable laws when developing a framework adjustment for this purpose.

#### 10. Amendments

This final rule includes, under Magnuson-Stevens Act section 305(d) authority, an amendment that adjusts the conversion factor for whole monkfish to reflect how monkfish are actually landed. Previously, whole monkfish were assumed to be landed in true whole form (i.e., live weight). However, current industry practice is to "gut" the whole fish (i.e., remove the stomach, liver, and other entrails) at sea, and land in this form. The current tail-to-whole-weight conversion factor for monkfish is 3.32. However, a more accurate tail-to-whole-weight (landed) conversion factor is 2.91, which reflects the conversion to a monkfish that still has its head attached, but its guts removed. This technical correction to the conversion factor results in a reduction in the whole-weight equivalent trip limit, but not to the tail-weight trip limit, which is the value recommended by the Councils. Additionally, this changes the monkfish heads conversion factor proposed by the Councils from 2.32 to 1.91 to be consistent with this corrected conversion factor.

In addition to the above amendment, this final rule also removes the letter of authorization (LOA) requirement at § 648.92(b)(1)(iii) for vessels fishing in the NFMA with a VMS unit since this requirement was removed from the general area declaration requirements at § 648.94(f) in the final rule implementing Framework Adjustment 5 to the Monkfish FMP (73 FR 22831; April 28, 2008).

This final rule also clarifies the meeting requirements for framework adjustments with respect to this joint FMP to reflect that one framework meeting must be held by each of the two Councils, versus one framework meeting overall.

Finally, this final rule updates the specification and framework adjustment processes for the Monkfish FMP to include procedures for specifying ACLs and AMs.

#### Comments and Responses

Four comments were received on the proposed rule and the amendment, from three individuals (one individual commented separately on both the proposed rule and the amendment). Two commenters did not support the amendment, while the third commenter

did not express specific support or lack thereof for the amendment, but focused on the need for a broader approach to fishery management.

This section summarizes the principal comments in the individual comment letters that pertained to Amendment 5 and the proposed rule, and NMFS's response to those comments. Any comments received that were not specific to the management measures in the Amendment 5 proposed rule, or in the amendment document, are not addressed in this final rule.

*Comment 1:* An individual stated that the management measures in Amendment 5 are not sufficiently restrictive enough to protect the resource for future generations.

*Response:* To the extent that the comment addresses the NMFA, NMFS has concluded that the NMFA measures are not consistent with the most recent stock assessment (SARC 50) and most recent recommendations by the SSC of the ABC/ACL for the NFMA. As more fully explained in the above preamble, NMFS, therefore, has disapproved the specification of an ACT and associated DAS and trip limits for the NMFA. Proposed Framework 7 is intended to implement more restrictive specifications to be consistent with the newest assessment and ABC recommendations. In the meantime, the current measures will roll over until Framework 7 is implemented. These measures result in a TAL that is more restrictive than that recommended by the Councils in Framework 7, and, therefore, is considered to be consistent with new recommendations for the ABCs/ACLs for the northern area of this fishery. The other management measures in Amendment 5 include new provisions and control rules for establishing biological and management reference points, including ACLs and AMs aimed at preventing overfishing from occurring in this fishery, and for the SFMA, the ACT and associated management measures to not exceed the ACL. These other management measures are based on the best scientific advice available, which indicates that both monkfish stocks are not overfished, and overfishing is not occurring. Thus, NMFS considers the management measures in Amendment 5, including the specifications for the SFMA, and the rollover measures for NMFA, to be sufficiently restrictive to prevent overfishing, but retain sufficient flexibility to help the fishery achieve OY, as required by NS 1 of the Magnuson-Stevens Act.

*Comment 2:* The same individual who expressed opposition to the measures in Amendment 5 also commented on the

type of NEPA document prepared for this amendment, stating that an Environmental Impact Statement (EIS) should have been prepared versus an EA, given the negative environmental effect that would result from this action.

*Response:* NMFS disagrees with the commenter's assertion that an EIS should have been prepared for this action. Although the commenter made only a general reference to the need to prepare an EIS for this action, in light of similar comments received on Framework 45 to the Northeast Multispecies FMP concerning the impacts of that action on Atlantic sturgeon, which is proposed for listing under the Endangered Species Act (ESA), NMFS is providing additional information in its response to this comment explaining why this action will not have a significant impact on Atlantic sturgeon; thus obviating the need for an EIS.

Subsequent to the submission of Amendment 5 by the NEFMC on September 20, 2010, NMFS published two **Federal Register** notices on October 6, 2010 (75 FR 61872 and 75 FR 61904) that proposed listing five distinct population segments (DPS) of Atlantic sturgeon under the ESA along the U.S. East Coast as either threatened or endangered. As such, the Amendment 5 EA, as submitted, did not include information on the proposed listing for this species, relevant information pertaining to the biology of this species and rationale for the proposed listing. Additionally, it did not specifically consider the potential impacts of the management measures in Amendment 5 on Atlantic sturgeon. As a result, NMFS prepared an Addendum to the Amendment 5 EA that incorporates pertinent biological information on Atlantic sturgeon, the proposed listing, and updated bycatch estimates in both otter trawl and sink gillnet fisheries for the purpose of assessing the impacts of this action on Atlantic sturgeon. Although NMFS asserts that the measures in Amendment 5 will not result in a jeopardy determination or any significant adverse impacts for Atlantic sturgeon between the effective date of this action and when a final listing determination is expected to be made in October 2011, there is insufficient information to make a determination of no jeopardy or adverse impact for the entire FY 2011, and beyond. As such, in conjunction with the partial approval of Amendment 5, NMFS will initiate a Monitoring and Action Plan that consists of the steps NMFS will take to mitigate the impacts of the monkfish fishery on Atlantic sturgeon from October 2011 through FY

2013 to avoid significant impacts to Atlantic sturgeon from the monkfish fishery. Thus, based upon the analysis contained in the EA prepared for Amendment 5 and the addendum prepared by NMFS, this action will not result in any significant environmental effects, which is the basis for triggering an EIS under NEPA.

*Comment 3:* One commenter expressed opposition to the amendment on the grounds that it would result in reductions to DAS and trip limits.

*Response:* This comment seems to be based on a misunderstanding of the management measures in Amendment 5. This action retains the trip limits currently in effect for the SFMA, but increases the DAS allocations for vessels fishing in this area from 23 monkfish DAS to 28 monkfish DAS. Although the ACT and associated DAS and trip limits for the NFMA are disapproved, the current DAS and trip limits remain in effect for that area until modified by a future action such as Framework 7. Thus, this action would not result in reductions in DAS or trip limits for either management area. Additionally, this action contains two measures aimed at increasing efficiency and reducing waste (i.e., discards): 1) The automatic DAS adjustment for a trip limit overage; and 2) the authorization to land monkfish heads.

*Comment 4:* The third commenter did not comment specifically on Amendment 5 or its associated management measures, but focused on the need for a broader approach to fishery management versus focusing management on a single species like monkfish.

*Response:* NMFS agrees that a broader approach to fishery management may have benefits, and has been exploring an ecosystem approach to fishery management for several years. However, ecosystem models are still being developed and require data from multiple sources that may not yet exist in a usable or consistent form. Monkfish is considered a data poor species because basic information on life history parameters is minimal or lacking. Thus, incorporating monkfish into larger ecosystem models that are currently under development is unlikely to occur in the near future; however, NMFS remains confident that the management measures implemented in this action are consistent with the best available scientific information on the monkfish resource.

#### Changes From the Proposed Rule

1. In § 648.92(b), the proposed changes to paragraphs (1)(i), (iv) and (v); and (2)(i) are not included in this final

rule due to the disapproval of the NFMA ACT and associated DAS and trip limits. Additionally, paragraph (b)(1)(ii) is modified to reflect that the current coastwide DAS allocation of 31 DAS will remain in effect.

2. In § 648.94(a), the introductory sentence has been revised to clarify that vessels may not possess or land only monkfish heads, but that any monkfish heads possessed or landed must correspond to an appropriate amount of tails.

3. In § 648.94(b)(1)(ii), the monkfish possession limit for Category B and D vessels fishing in the NFMA is changed from 800 lb (363 kg) tail weight per DAS to 470 lb (213 kg) tail weight per DAS to reflect the disapproval of the revised trip limits in Amendment 5 in this final rule.

4. In § 648.96(c), the ABC and ACL setting process has been revised to more clearly reflect the intent of the Councils in Amendment 5 to establish these reference points based upon an automated calculation method, approved by the SSC, that utilizes the best available science.

#### Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 5 is necessary for the conservation and management of the monkfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Councils prepared an EA for Amendment 5. In addition, NMFS prepared an Addendum to Amendment 5 to analyze the potential impacts of the amendment on Atlantic sturgeon. Based on the analysis contained in the EA and the Addendum, the Assistant Administrator (AA) concluded that, based on the monitoring and action plan to mitigate impacts on Atlantic sturgeon, there will be no significant impact on the human environment as a result of this rule. A copy of the EA, as prepared by the Councils, is available from the Councils and a copy of the Addendum is available from Northeast Regional Office of NMFS (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d), NMFS finds good cause to waive the delay in effectiveness requirement because such a delay is contrary to the public interest and unnecessary.

The purpose of this rule is to improve the overall management of the monkfish fishery by establishing measures in the form of ACLs and AMs aimed at preventing overfishing. Additionally,

this rule establishes measures intended to promote efficiency and reduce waste in the monkfish fishery. Specifically, this rule authorizes the landing of monkfish heads separately from the body, which was previously prohibited; and allows a limited access monkfish vessel to land one additional day's worth of monkfish than would otherwise be authorized based on its DAS usage, and adjust the DAS charged to the vessel to account for the trip limit overage. Delaying this rule's effectiveness may result in economic harm to vessels that must currently land their monkfish in whole form, and process the fish into heads and tails for separate markets upon landing, or discard the monkfish heads at sea, both of which are practices that increase waste and reduce the economic yield from the monkfish resources. Further, delaying the effectiveness of this rule may result in social and economic harm by continuing to require vessels to spend enough time at sea to fully account for their monkfish catch on board. Under this current practice, vessel safety is compromised by staying at sea in potentially unsafe weather conditions solely to ensure that their monkfish DAS charge corresponds to the monkfish catch on board. Thus, delaying the effective date of this final rule would undermine its intent and result in undue harm to vessels by delaying the implementation of measures intended to promote safety and efficiency, and reduce waste in the monkfish fishery. Moreover, even if this rule is effective immediately, the regulated entities need not come into immediate compliance. They can continue their current practices and remain in compliance with the new regulations. Because the 30-day delay in effectiveness of this rule is contrary to the public interest, pursuant to 5 U.S.C. 553(d), the AA finds good cause to waive the 30-day delay in effective date.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of Amendment 5. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, relevant analyses contained in the Framework and its EA and a summary of the analyses completed to support the action in this rule. A copy of the analyses done in the Framework and EA is available from the Councils (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this

action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

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

Four comments were received on the proposed rule and the amendment. However, none of these comments were specific to the IRFA or of Amendment 5 more generally.

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

The Small Business Administration (SBA) considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than \$4 million in annual sales, while the size standard for charter/party operators (part of NAICS code 487210) is \$7 million in sales. Based on 2005–2007 average conditions, median gross sales by commercial fishing vessels were just over \$200,000, and no single fishing entity earned more than \$2 million. For regulated charter/party operators, the median value of gross receipts from passengers was just over \$9,000, and did not exceed \$500,000 in any year during 2001 to 2007. The vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than \$3 million according to the dealer's data for FYs 1994 to 2009, consistent with analyses under the RFA for recent scallop actions. Although multiple vessels may be owned by a single owner, available tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for the purposes of this analysis, each permitted vessel is treated as a single small entity and is determined to be a small entity under the RFA. Accordingly, there are no differential impacts between large and small entities under this final rule.

The management measures in Amendment 5 have the potential to affect all federally permitted monkfish vessels that are actively participating in the fishery. As of September 2009, there were 758 limited access monkfish permit holders and 2,156 open access permit holders. Of these, 573 limited access permit holders (76 percent) actively participated in the monkfish fishery during FY 2008, while only 504 open access permit holders (23 percent) actively participated in the fishery

during this time period. Thus, this action is expected to impact at least 1,077 currently active monkfish permit holders.

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

The only Amendment 5 measure that requires either new or revised reporting and recordkeeping requirements is the provision enabling vessels to land up to the equivalent of one additional daily monkfish trip limit than would otherwise be authorized based on the vessel's monkfish DAS usage for that trip, provided the vessel notifies NMFS of the overage via vessel VMS prior to crossing the VMS demarcation line, or via phone using the Agency's IVR call-in system at least 1-hr prior to landing. Although this action introduces a new reporting requirement under OMB Control Number 0648–0202, this new requirement will not affect the overall reporting burden associated with the existing VMS and IVR call-in notification requirements authorized under this OMB Control number. As such, formal Paperwork Reduction Act (PRA) clearance through OMB is not required. There are no other compliance requirements associated with this final rule implementing Amendment 5.

This final rule does not duplicate, overlap, or conflict with other Federal rules.

**Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes**

All of the approved management measures in Amendment 5 being implemented through this final rule either provide for increased fishing opportunities, increase flexibility and promote efficiency within the fishery, or reduce waste associated with regulatory discards. In terms of increased fishing opportunities, this action increases the annual DAS allocation to vessels operating in the SFMA from 23 DAS to 28 DAS. With regard to increased flexibility and efficiency, this action implements a measure that will allow limited access monkfish vessels to land one additional monkfish trip limit beyond what their DAS usage for that trip would normally allow, and have their DAS adjusted to account for the additional trip limit. Not only does this measure increase flexibility and efficiency by allowing vessels to return to port sooner than they would otherwise be authorized, reducing operating costs and time at sea, it helps to reduce regulatory discards by

enabling vessels to land up to another day's worth of monkfish to account for any additional fish caught in their nets. Finally, this action will authorize vessels to land monkfish heads separately from the body, which was previously prohibited under the FMP. Previously, vessels that intended to sell their monkfish heads to a separate market than the tails were required to land their monkfish whole, and separate the heads from the body after landing. This action amends the Monkfish FMP to allow the landing of monkfish heads separately from the body, and implements an appropriate conversion factor to ensure compliance with the landing limits. Therefore, by implementing management measures that increase fishing opportunities, increase flexibility and efficiency, and reduce waste, NMFS has taken the steps necessary to minimize the impacts of this action on small entities consistent with the stated objectives of applicable statutes. Further, by disapproving the specification of the NMA ACT and associated DAS and trip limits, NMFS is preventing overfishing since the NFMA ACT recommended by the Councils is 42 percent higher than the recalculated ABC that is based upon the most recent scientific advice. Thus, although disapproving the NFMA leaves more restrictive management measures in effect than those proposed in Amendment 5, it prevents long-term economic losses resulting from the need to implement even more restrictive management measures in the future if overfishing were to occur as a result of implementing the Council's proposed action, which is inconsistent with the best scientific information available.

**Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the NMFS Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the monkfish fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional

Office's Web site at <http://www.nero.noaa.gov>.

This final rule contains a collection-of-information requirement subject to the PRA and which has been approved by OMB under control number 0648-0202. Public reporting burden for monkfish trip limit overage notification requirement is estimated to average 30 seconds per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. These 30 seconds are included within the total 2-minute estimated response time for the DAS call-in notification requirement, but will be additional for vessels using the VMS procedure. Furthermore, this action is expected to reduce the total number of monkfish trips for vessels that take advantage of this new measure since they will be using their monkfish DAS at a higher rate in exchange for being able to land more monkfish on a given trip. As such, although this action adds a new reporting requirement, it will not change the overall reporting burden associated with the existing VMS and call-in notification requirements authorized under OMB Control Number 0648-0202. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

An informal consultation under the ESA was concluded for the measures proposed in Amendment 5 on March 4, 2011. The measures in Amendment 5 are not expected to modify the fishery in a manner that would cause impacts to species listed under the ESA that were not otherwise considered in the last biological opinion conducted for this fishery on October 29, 2010. As a result of the informal consultation, NMFS has determined that fishing activities conducted under this rule do not meet the need to reinstate formal consultation. The measures in Amendment 5 fall within the scope of consultations on previous Monkfish FMP actions. None of these measures are expected to result in the addition of adverse impacts to current ESA-listed cetaceans, sea turtles, and fish species

which would change the basis for the conclusion of the 2010 Biological Opinion for the Monkfish FMP. Additionally, a supplemental analysis was conducted to assess the impacts of Amendment 5 on Atlantic sturgeon, as presented in the Addendum to Amendment 5. Based upon bycatch estimates for 2006–2010, between 8 and 32 percent of the total annual observations of Atlantic sturgeon in the monkfish fishery occurred during the May to October timeframe. Given that interactions will most likely occur, NMFS will work to determine the magnitude of the effects to the species and whether any measures to mitigate impacts are needed, utilizing the conferencing procedures of the ESA.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 20, 2011.

**Samuel D. Rauch III,**

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

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

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

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

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

■ 2. In § 648.4, paragraphs (a)(9)(i)(M) and (N) are removed and paragraph (a)(9)(ii) is added to read as follows:

##### § 648.4 Vessel permits.

\* \* \* \* \*

(a) \* \* \*

(9) \* \* \*

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

\* \* \* \* \*

■ 3. In § 648.92, paragraphs (b)(1)(ii) and (iii) are revised and paragraph (b)(10) is added to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) *DAS restrictions for vessels fishing in the SFMA.* Limited access monkfish vessels may only use 28 of their 31 monkfish DAS allocation in the SFMA. All limited access monkfish vessels fishing in the SFMA must declare that they are fishing in this area through the vessel call-in system or VMS prior to the start of every trip. In addition, if a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS shall presume that any monkfish DAS used were fished in the SFMA.

(iii) *DAS declaration provision for vessels fishing in the NFMA with a VMS unit.* Any limited access NE multispecies vessel fishing under a NE multispecies Category A DAS in the NFMA may change its DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip, but prior to crossing the VMS demarcation line upon its return to port or leaving the NFMA, if the vessel exceeds the incidental catch limit specified under § 648.94(c).

(A) Vessels that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS during the course of a trip remain subject to the NE multispecies DAS usage requirements (i.e., use a NE multispecies Category A DAS in conjunction with the monkfish DAS) described in paragraph (b)(2)(i) of this section.

(B) Gillnet vessels that change their DAS declaration in accordance with this paragraph (b)(1)(iii) are not subject to the gillnet minimum mesh size restrictions found at § 648.91(c)(1)(iii), but are subject to the smaller NE multispecies minimum mesh requirements for gillnet vessels found under § 648.80 based upon the NE Multispecies Regulated Mesh Area in which the vessel is fishing.

\* \* \* \* \*

(10) *DAS Adjustment for Trip Limit Overage.* Any limited access monkfish vessel, required to or voluntarily using a VMS, fishing on a monkfish DAS may land up to the equivalent of one additional day's worth of its trip limit (i.e., amount of monkfish authorized per DAS) than would otherwise be authorized, provided the vessel, vessel owner, or vessel operator notifies the Regional Administrator of the overage via VMS prior to crossing the VMS demarcation line. If the vessel is not required to be, or is not equipped with an operable VMS, the vessel, vessel operator, or owner must notify the Regional Administrator via the call-in system at least 1-hr prior to landing. The



monkfish DAS charged to the vessel will then be increased to equal a full 24-hr period plus 1 minute to account for the trip limit overage. For example, if a vessel has the equivalent of two monkfish DAS trip limits (based on its permit category) on board, but has only been declared into the monkfish DAS program for 15 hr, the vessel, vessel owner, or vessel operator may land fish equal to the two DAS trip limits only if the Regional Administrator of the overage is notified via VMS or the call-in system as described above. In this case, the monkfish DAS charged to the vessel would be adjusted from 15 hr to 24 hr and 1 minute.

\* \* \* \* \*

■ 3. In § 648.94, paragraphs (a), (b)(1), (b)(2)(i) and (ii), (b)(3)(ii)(A), (b)(4), (c)(1)–(c)(8), and (d)(2) are revised to read as follows:

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

(a) *General.* Monkfish may be possessed or landed either as tails only, tails with associated heads possessed separately, or in whole form (head on and gutted), or any combination of the three provided the weight of monkfish heads on board does not exceed 1.91 times the weight of monkfish tails on board. When any combination of tails, and whole fish are possessed or landed, the possession or landing limit shall be based on tail weight where all whole monkfish (head on and gutted) are converted to tail weight using the conversion factor of 2.91. For example, whole weight is converted to tail weight by dividing the whole weight by 2.91. Conversely, tail weight is converted to whole weight by multiplying the tail weight by 2.91. If heads only are possessed in combination with tails, the possession or landing limit for monkfish heads may not exceed 1.91 times the tail weight of fish on board, excluding any whole monkfish. The allowed amount of head weight is determined by multiplying the tail weight by 1.91. For example a vessel possessing 100 lb (45 kg) of tail weight may possess an additional 191 lb (87 kg) of monkfish heads ( $100 \times 1.91 = 191$ ). A vessel may not possess heads only without possessing the equivalent weight of tails allowed by using the conversion factor.

(b) \* \* \*

(1) *Vessels fishing under the monkfish DAS program in the NFMA—(i) Category A and C vessels.* Limited access monkfish Category A and C vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 1,250 lb (567 kg) tail weight or 3,638 lb (1,650 kg) whole weight of monkfish per DAS (or any prorated combination

of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *Category B and D vessels.* Limited access monkfish Category B and D vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 470 lb (213 kg) tail weight or 1,368 lb (621 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(2) *Vessels fishing under the monkfish DAS program in the SFMA—(i) Category A, C, and G vessels.* Limited access monkfish Category A, C, and G vessels that fish under a monkfish DAS in the SFMA may land up to 550 lb (249 kg) tail weight or 1,601 lb (726 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *Category B, D, and H vessels.* Limited access monkfish Category B, D, and H vessels that fish under a monkfish DAS in the SFMA may land up to 450 lb (204 kg) tail weight or 1,310 lb (594 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87) of monkfish heads only, as described in paragraph (a) of this section.

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \*

(A) *Category C, D, and F vessels.* Limited access monkfish Category C, D, or F vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not a monkfish DAS, may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight per DAS if gear other than trawl gear is used at any time during the trip. Category C, D, and F vessels participating in the NE Multispecies

Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

\* \* \* \* \*

(4) *Category C, D, F, G, or H vessels fishing under the scallop DAS program.* A Category C, D, F, G, or H vessel fishing under a scallop DAS may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

\* \* \* \* \*

(c) \* \* \*

(1) *Vessels fishing under a NE multispecies DAS—(i) NFMA.* Vessels issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, fishing under a NE multispecies DAS exclusively in the NFMA may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *SFMA.* If any portion of the trip by a vessel issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category G or H permit, is fished under a NE multispecies DAS in the SFMA, the vessel may land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

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



monkfish incidental catch (Category E) permit fishing under a scallop DAS may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(3) *Vessels fishing with large mesh and not fishing under a DAS*—(i) A vessel issued a valid monkfish incidental catch limit (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs with mesh no smaller than specified at §§ 648.80(a)(3)(i) and (a)(4)(i), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at § 648.80(b)(2)(i), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA under a Skate Bait

Letter of Authorization, as authorized under § 648.322(c), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iv) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE or MA RMAs west of the MA Exemption Area boundary with mesh no smaller than specified at § 648.104(a)(1) while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, up to a maximum of 450 lb (204 kg) tail weight or 1,310 lb (594 kg) whole weight of monkfish per trip, unless that vessel is fishing under a Skate Bait Letter of Authorization in the SNE RMA. Such a vessel is subject to the incidental catch limit specified under paragraph (c)(3)(iii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(4) *Vessels fishing with small mesh and not fishing under a DAS*. A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing with mesh smaller than the mesh size specified by area in paragraph (c)(3) of this section, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land only up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is

divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(5) *Small vessels*. A vessel issued a limited access NE multispecies small vessel category permit and a valid monkfish incidental catch (Category E) permit that is less than 30 ft (9.1 m) in length and that elects not to fish under the NE multispecies DAS program, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail only weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb of monkfish heads only, as described in paragraph (a) of this section.

(6) *Vessels fishing with handgear*. A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(7) *Vessels fishing with surfclam or ocean quahog dredge gear*. A vessel issued a valid monkfish incidental catch (Category E) permit and a valid surfclam or ocean quahog permit, while fishing exclusively with a hydraulic clam dredge or mahogany quahog dredge, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(8) *Scallop vessels not fishing under a scallop DAS with dredge gear*—(i)

*General provisions.* A vessel issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, and also possessing a valid General Category sea scallop permit or a limited access sea scallop vessel not fishing under a scallop DAS, while fishing exclusively with scallop dredge gear as specified in § 648.51(b), may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip, unless otherwise specified in paragraph (c)(8)(ii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *Limited access scallop vessels fishing in Sea Scallop Access Areas.* A vessel issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, and also possessing a limited access sea scallop permit while fishing exclusively with scallop dredge gear as specified in § 648.51(b), and fishing in one of the established Sea Scallop Access Areas specified under § 648.59, may possess, retain, and land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per day or partial day fished within the boundaries of the Sea Scallop Access Area. Time within the applicable access area, for purposes of determining the incidental catch limit, will be determined through the vessel's VMS unit. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(d) \* \* \*

(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:  $(0.10) \times [(tail\ weight \times 2.91) + (whole\ fish \times 1)]$ .

\* \* \* \* \*

■ 4. Section 648.96 is revised to read as follows:

**§ 648.96 FMP review, specification, and framework adjustment process.**

(a) *Annual review and adjustment process.* The NEFMC and MAFMC, the

Monkfish Plan Development Team (PDT), and the Monkfish Advisory Panel shall monitor the status of the monkfish fishery and resource.

(1) *Monkfish annual SAFE Report.*

The PDT shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the monkfish fishery. The SAFE Report shall be the primary vehicle for the presentation of updated biological and socio-economic information regarding the monkfish fishery. The SAFE report shall provide source data for any adjustments to the management measures that may be needed for the Councils to meet the goals and objectives of the FMP.

(2) *Annual review.* The PDT shall meet at least annually to conduct a review of the monkfish fishery in relation to the goals and objectives specified in the Monkfish FMP, including a review of catch relative to the annual catch targets (ACTs) for each management area. They shall review available data pertaining to discards and landings; DAS and other measures of fishing effort; stock status and fishing mortality rate information, if available; enforcement of and compliance with management measures; and any other relevant information. Based on this review, the PDT shall provide guidance to the NEFMC and MAFMC regarding the need to adjust management measures to better achieve the FMP's goals and objectives. After considering the PDT's guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the annual framework adjustment process specified in paragraph (a)(3) of this section, the in-season framework adjustment process specified in paragraph (b) of this section, or through an amendment to the FMP.

(3) *Annual framework adjustment procedures.* (i) If necessary based on the annual review, the Councils may develop adjustments to management measures to achieve the annual catch target (ACT) for the upcoming fishing year, and may develop other management options to better achieve the goals and objectives of the Monkfish FMP, which may include a preferred option. The Councils must demonstrate through analysis and documentation that any options they develop are expected to meet the goals and objectives of the Monkfish FMP. Additionally, if necessary based on the recommendation of the NEFMC's Scientific and Statistical Committee (SSC), the Councils may recommend measures to revise the ABCs and ACLs for the upcoming fishing year(s) as

described in paragraph (c) of this section.

(ii) The range of options developed by the Councils may include any of the management measures in the Monkfish FMP, including, but not limited to: ACTs; closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; changes to the Northeast Region SBRM (including the CV-based performance standard, fishery stratification, and/or reports) and/or industry-funded observers or observer set-aside programs; changes to the Monkfish Research Set-Aside Program; and other frameworkable measures included in §§ 648.55 and 648.90.

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

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

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

Regional Administrator may select any measure that has not been rejected by both Councils and that meets the Monkfish FMP's goals and objectives.

(iv) If the Councils submit, on or before December 1, a recommendation to the Regional Administrator after one meeting with each Council, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the **Federal Register** as a proposed rule, or as otherwise authorized under the Administrative Procedure Act. The Councils may instead submit their recommendation on or before February 1, if they choose to follow the framework process outlined in paragraph (b) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs with the Councils' recommendation the recommended management measures may be published as a proposed rule or a final rule, in accordance with the Administrative Procedure Act. If the effective date of a final rule to implement the recommended measures falls after the start of the fishing year, fishing may continue under the existing regulations, but any 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 fishing year.

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

(b) *Within-season management action.* At any time, the Councils or the Joint Monkfish Oversight Committee (subject to the approval of the Councils' Chairmen) may initiate action to add or adjust management measures if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP.

(1) *In-season Framework adjustment procedures.* (i) Framework adjustments shall require at least one initial meeting of the Joint Monkfish Oversight

Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two final Council meetings, one at each Council. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to the first of the two final Council meetings.

Framework adjustments and amendments to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(ii) Recommended adjustments to management measures must come from the categories specified under paragraph (a)(3)(i) of this section, including specification of ABC and ACLs, if necessary.

(2) *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.

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

(4) *Action by NMFS.* (i) If the Regional Administrator approves the Councils' recommended management measures and determines that the recommended management measures should be issued

as a final rule based on the factors specified in paragraph (c)(3)(i) of this section, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of the recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

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

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

(c) *Process for setting ABCs and ACLs.*

(1) The Councils or the PDT may develop options for setting ABC, ACL, and OFL for each monkfish stock, as necessary, as part of the annual review and adjustment process specified in paragraph (a) of this section, or as otherwise deemed necessary following the in-season adjustment process specified in paragraph (b) of this section. These options shall be submitted to the SSC for consideration. The Councils or the PDT may recommend to the SSC that ABC, ACL, and OFL are specified for each monkfish stock for multiple years as determined necessary to best align management with the stock assessment process for this fishery.

(i) *ABC recommendation.* The Councils or the PDT shall calculate ABC values for each monkfish stock based on the ABC control rule established in the FMP. These calculations shall be reviewed by the SSC, guided by terms of reference developed by the Councils. The SSC shall either concur with these ABC calculations, or provide alternative recommendations for each stock and describe the elements of scientific uncertainty used to develop its recommendations. If the SSC concurs with the ABC calculations, the revised ABC values are automatically updated and no action by the Councils is necessary. If the SSC provides an alternative recommendation for calculating the ABC than that currently specified in the FMP, the Councils

would need to need to take action through the annual or in-season framework adjustment process specified in paragraphs (a) and (b) of this section, respectively, to implement the SSC's recommendation. The SSC may also consider other related issues specified in the terms of reference developed by the Councils, including, but not limited to, OFLs, ACLs, and management uncertainty.

(ii) *ACL recommendations.* The Councils shall establish ACLs for each management area that are equivalent to the ABCs calculated using the control rule established in the FMP, and reviewed and recommended by the SSC.

(iii) *Timing.* If determined necessary under the annual review process, the Councils shall develop and approve any recommendations for ABCs and ACLs prior to December 31, to the extent possible. Once the Councils have approved the recommended ABCs and ACLs, only if they require adjustments to the ACTs described in paragraph (d) shall they be submitted to NMFS as part of an annual framework adjustment or in-season framework adjustment, as described in paragraphs (a) and (b) of this section, along with any necessary analysis required by applicable law.

After receipt of the Councils' recommendation for ACLs, NMFS shall review the Councils' decision and, if consistent with applicable law, implement the ACLs in accordance with the Administrative Procedure Act.

(d) *Accountability Measures (AMs).*  
(1) *Specification of ACTs.* Through the annual review process described in paragraph (a) of this section, or as otherwise determined necessary, the Councils shall specify ACTs for each management area that are set sufficiently below the ACL to account for management uncertainty and prevent the ACL from being exceeded. The ACTs established for each management area shall be the basis for setting management measures (DAS and trip limits), after accounting for incidental catch in non-directed fisheries and discards in all fisheries.

(2) *ACL overages and adjustments—*

(i) *Council action.* The Councils shall revise the ACT for a monkfish stock if it is determined that the ACL was exceeded in any given year, based upon, but not limited to, available landings and discard information. The amount of an ACL overage shall be deducted from the ACT for the corresponding monkfish stock on a pound-for-pound basis. The revised ACT and corresponding management measures (DAS and trip limits) shall be implemented through either the annual or in-season framework adjustment process,

specified in paragraphs (a) and (b) of this section, in the second fishing year following the fishing year in which the ACL overage occurred.

(ii) *NMFS action.* If the Councils fail to take appropriate action to correct an ACL overage consistent with paragraph (d)(1)(i) of this section, the Regional Administrator shall implement the required adjustment, as described in paragraph (d)(2)(i) of this section, including the specification of DAS and trip limits using a formulaic approach developed by the PDT, in accordance with the Administrative Procedure Act and other applicable law. Notification of the proposed ACL revision and DAS and/or trip limit adjustments shall be published in the **Federal Register** no later than January 1, if possible, for implementation on May 1 of the second fishing year following the fishing year in which the ACL overage occurred.

(e) *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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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 110111018-1279-03]

RIN 0648-XA109

#### Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the annual harvest guideline (HG) and seasonal allocations for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2011, through December 31, 2011. These specifications have been determined according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2011 maximum HG for Pacific sardine is 50,526 metric tons (mt), of which 4,200 mt is initially set aside for potential use under Exempted Fishing Permits (EFPs). The remaining 46,326 mt, constituting the initial commercial fishing HG, has been divided across the

seasonal allocation periods in the following way: January 1–June 30—15,214 mt is allocated for directed harvest with an incidental set-aside of 1,000 mt; July 1–September 14—17,530 mt is allocated for directed harvest with an incidental set-aside of 1,000 mt; September 15–December 31—8,582 mt is allocated for directed harvest with an incidental set-aside of 1,000 mt, plus an additional 2,000 mt set aside to buffer against reaching the total HG. This rule is intended to conserve and manage Pacific sardine off the West Coast.

**DATES:** Effective June 24, 2011 through December 31, 2011.

**ADDRESSES:** Copies of the report "Assessment of Pacific Sardine Stock for U.S. Management in 2011" may be obtained from the Southwest Regional Office (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

**SUPPLEMENTARY INFORMATION:** The CPS FMP, which was implemented by publication of a final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed, and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Conversely, annual biomass estimates are not currently calculated for species that are classified as monitored stocks (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the estimated biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Sub panel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with HG recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its HG recommendation to NMFS.

This rule implements the 2011 HG for Pacific sardine in the U.S. EEZ off the Pacific coast, that is between 3 and 200 nautical miles seaward of the low water line along the coast. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific sardine fishery based on the annual specification framework in the FMP. This framework includes a harvest