

**References Cited**

A complete list of all references cited herein, as well as others, is available upon request from the Assistant Field Supervisor (see ADDRESSES section).

Author. The primary author of this proposed rule is Robert Leachman (see ADDRESSES section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend 50 CFR Part 17, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for Part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1554; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under “BIRDS” to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
* Plover, mountain .....	* <i>Charadrius montanus.</i>	* U.S.A. (western) .....	* Entire .....	* T	* 	NA	* NA
*	*	*	*	*	*		*

Dated: December 23, 1998.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 99–3628 Filed 2–12–99; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 981223319-8319-01; 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:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement the Monkfish Fishery Management Plan (FMP). The FMP proposes an overfishing definition and a 10-year rebuilding schedule to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and implementation of the following measures: Target total allowable catch levels (TACs) for each of two management areas; 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.

**DATES:** Comments on the proposed rule must be received on or before March 26, 1999.

**ADDRESSES:** Comments should be sent to Jon C. Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Monkfish FMP.”

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Acting Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the FMP, its Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA) contained within the RIR, 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.

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

**SUPPLEMENTARY INFORMATION:** In its report of March 1997, the 23rd Northeast Regional Stock Assessment

Workshop (23rd SAW) concluded that monkfish is overfished. On September 30, 1997, NMFS submitted to the New England and Mid-Atlantic Fishery Management Councils (Councils) the Report on the Status of the Fisheries of the United States, prepared pursuant to section 304 of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act (SFA) on October 11, 1996. This report identified 76 overfished stocks, including monkfish, as well as 10 stocks that were approaching an overfished condition. Each Council was notified that it is required to develop measures to end overfishing and rebuild stocks that are overfished within its geographical area of authority. The purpose of this proposed action is to initiate management of monkfish (*Lophius americanus*) pursuant to the Magnuson-Stevens Act.

Development of an FMP actually began in 1991, when the NEFMC and the Mid-Atlantic Fishery Management Council (MAFMC) each requested approval to develop a management plan for monkfish. The Administrator, Northeast Region, NMFS (Regional Administrator), suggested that the NEFMC and MAFMC convene a joint committee to evaluate prospects for managing this fishery. That committee found that there were sufficient reasons for concern, including the recent declines in survey indices, the declining size of landed monkfish, the potential for shifts in effort due to management restrictions on other species, evidence of an expanding directed fishery, and a rapidly growing market for monkfish tails and livers.

The Committee also suggested that the Councils jointly develop a management plan for monkfish. Because joint management of a fishery by two or more Fishery Management Councils is permitted only when the entire fishery management plan is jointly prepared, monkfish management measures could not be incorporated into an existing fishery management plan prepared by only one Fishery Management Council. The NEFMC and MAFMC worked together in developing management measures for monkfish and were formally notified by NMFS of their joint responsibility on February 3, 1998.

To achieve efficiency and to link monkfish to the similarly prosecuted multispecies fishery as much as possible, monkfish regulations are proposed to be incorporated in Part 648—Fisheries of the Northeastern United States, Subpart F—Management Measures for the Northeast Multispecies Fishery, and other appropriate sections.

The Councils, working jointly, adopted four management goals for monkfish: (1) to end and prevent overfishing and to rebuild and maintain a healthy spawning stock; (2) to optimize yield and maximize economic benefits to the various fishing sectors; (3) to prevent increased fishing on immature fish; and (4) to allow the traditional incidental catch of monkfish to occur. The measures proposed to achieve these goals are described later in this proposed rule.

Public hearings were held to receive comments on the proposed management measures in early 1997 in Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Maryland, Virginia, and North Carolina. During these public hearings the public raised many issues and NMFS identified additional ones, which resulted in revisions including, among other things, an allocation limit of 40 DAS annually for all qualifying vessels, more stringent qualification criteria for multispecies vessels, and an advancement of the mortality reduction schedule. Changes to the incidental catch allowances and to the gillnet limits were also made.

A second round of public hearings to receive comments on the revised management measures was held in early 1998. The major issues identified by the public at these hearings were issues of equity between qualifiers and non-qualifiers and between residents of various states, of discards caused by the proposed trip limits and by the proposed size limits, and of the complexity of the regulations and enforcement burden. These final public hearings resulted in further refinements

to the measures, which are presented in this proposed rule.

The monkfish resource is overfished. The overfishing definition was developed by the NEFMC based on a technical working group recommendation. It is composed of the two reference points now required under the Magnuson-Stevens Act for biomass and fishing mortality. The overfishing definition for monkfish is based on a fishery-independent survey database. According to the FMP, monkfish in the Northern and Southern Fishery Management Areas (NFMA and SFMA) (defined at § 648.9(a) and (b)) are overfished when the 3-year moving average of the survey weight per tow falls below the 33rd percentile of the period 1963–1994 for each area or when the fishing mortality rate in each area exceeds the average rate for the period 1970–1979. The 3-year moving average of survey weight per tow is the biomass component of the overfishing definition, or biomass threshold. A comparison of the current values (1.01 kg per tow in the NFMA and 0.41 kg per tow in the SFMA) to the threshold values (2.29 kg per tow in the NFMA and 1.84 kg per tow in the SFMA) indicates that the fishery is overfished. The fishing mortality rate component also indicates that overfishing is occurring. The estimates of fishing mortality rates of 0.15 in the NFMA and 0.51 in the SFMA reported in the most recent stock assessment are much greater than the average 1970–1979 fishing mortality rates of 0.05 and 0.14, respectively. Due to the limited scientific data regarding the monkfish fishery, scientists consider this overfishing definition to be somewhat risk-prone in a stock-declining situation. The overfishing definition should be reviewed and improved, if necessary, as new information becomes available. This could be accomplished through a framework adjustment procedure contained in the FMP. As the proposed management measures are severe, the Councils decided to propose reductions in catch in the first 3 years as to minimize the social and economic impacts on small entities. Still, the proposed measures are expected to reduce the overall revenues of the monkfish fishery in the first 3 years by approximately 50 to 54 percent. Further, more severe measures would take place in Year 4. At that time zero monkfish DAS would be allocated to monkfish limited access permit holders, unless other action is taken by the Councils and implemented by NMFS. The proposed rebuilding period is 10 years, based on consideration of the status and

biology of the stock and on the needs of fishing communities, which are described in the FMP.

The biological, economic, and social impacts of these measures and the cumulative impacts associated with other plans and regulations are discussed in the FMP and FEIS.

To address overfishing and rebuild the stock, the rule would create a permit moratorium on new entrants to the fishery after the control date, which is February 27, 1995. It would require that vessels have a limited access permit and fish during a monkfish DAS when targeting monkfish or exceeding the monkfish incidental catch allowances that are defined for other fisheries. The FMP also establishes an annual review and framework adjustment process that would ensure that management meets the mortality reduction and rebuilding targets. The proposed management measures are necessary to halt overfishing, to rebuild stock biomass to conditions that will produce maximum sustainable yield, and to achieve optimum yield (OY).

#### **Total Allowable Catch**

Fishing mortality is above the overfishing threshold and must be reduced to avoid continuing declines in stock biomass. The mortality levels during a period of population stability (1970–1979) were 68 and 78 percent lower than 1990–1995 levels in the NFMA and SFMA, respectively. Without accounting for improved size selectivity, the total allowable landings would need to be reduced to 4,047 mt (8,921,958 lb) and 3,252 mt (7,169,312 lb), respectively, to halt overfishing. The proposed management measures would potentially improve size selectivity, but the magnitude of these improvements is difficult to quantify and depends on changes in fishing behavior. The Councils, therefore, propose reductions and adjustments to the target TAC levels as future conditions change. 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 would be established by this rule. The target TACs would be based on the best available scientific information and would 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, annual target TACs of 5,673 mt (12,506,614 lb) and 6,024 mt (13,280,423 lb) in the NFMA and the SFMA are proposed. A quantitative analysis of projected harvests under the

limited access, DAS, and trip limit measures estimated that 7,968 mt (17,566,138 lb) and 9,097 mt (20,055,115 lb) would be harvested in the NFMA and SFMA, respectively, exceeding the proposed target TAC specifications. The estimated effects of the preferred alternative, however, do not take into account the impacts of other factors that could not be quantified (e.g., changes in fishing strategies caused by requiring multispecies and scallop vessels to take their monkfish DAS simultaneously with multispecies and scallop DAS, size limits, and area closures), which are intended to make up for the difference. Subsequent target TAC reductions and other restrictions may be necessary to achieve the rebuilding objectives of the FMP. The target TAC levels would be set or adjusted so as to attain a fishing mortality rate of 0.07 in the NFMA and 0.26 in the SFMA for the 1999, 2000, and 2001 fishing years. Beginning with the 2002 fishing year, the target TACs would be set so as to stop overfishing in 2002 and allow rebuilding to the stock biomass targets from fishing years 2002 to 2009.

#### Qualification Criteria for Limited Access

Vessels would 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). This period was selected because it encompasses the development of the directed monkfish fishery and is sufficiently broad so that it is unlikely that a vessel could not qualify due to unfortunate circumstances such as equipment malfunction, extended maintenance, or illness. Any vessel that targeted monkfish even on a seasonal basis would be likely to qualify for limited access.

Subject to the restrictions defined in the proposed rule, all vessels would qualify 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 would receive a "Category A" monkfish limited access permit. Vessels that have a multispecies or scallop limited access permit and qualify according to this criterion would 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 would 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 would receive a "Category B" monkfish limited access permit. Vessels with a multispecies or scallop limited access permit that qualify according to this criterion would receive a "Category D" monkfish limited access permit. (See Table 2.)

#### Permitting and Reporting Requirements

Vessels that catch monkfish would need to 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 would also be required to submit Vessel Trip Reports. Vessels with a limited access monkfish permit would be required to call in and out of the monkfish DAS program when they are participating in the monkfish fishery. Dealers that land monkfish would need to apply for a Dealers 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 would be allocated to limited access permitted vessels on May 1, 1999 (Year 1), and at the beginning of Years 2 and 3. In Year 4 monkfish DAS would be set to zero (0), unless other action is taken by the Councils and implemented by NMFS. (See Table 1.)

Table 1. Monkfish Fishing Year and Maximum Annual DAS Allocations

Fishing year	Maximum Annual DAS allocation
May 1, 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

Any vessel could carry over a maximum of 10 unused monkfish DAS to the following fishing year's allocation (including beyond May 1, 2002). Unused monkfish DAS could 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) would receive 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 would also count against a multispecies or scallop DAS, whichever is applicable. A combination vessel that holds both a multispecies and a scallop permit could 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.)

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

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

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

<sup>2</sup> DAS allocations indicated are for fishing years 1999, 2000, and 2001. For fishing years 2002 and thereafter, monkfish DAS would 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 would 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 would 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 would 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 would have a 1,500 lb (680 kg) tail-weight or 4,980 lb (2,259 kg) whole weight per DAS landing limit; (2) Category B and D vessels using mobile gear during a monkfish DAS would have a 1,000 lb (454 kg) tail-weight or 3,320 lb (1,506 kg) whole weight per DAS landing limit; and (3) any vessel using fixed gear during a monkfish DAS would have a 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight per DAS landing limit.

### Incidental Catch for Vessels Not on a Monkfish DAS

Beginning May 1, 1999 (or the date the final rule implementing the FMP is

effective), the following measures would apply:

1. Vessels lawfully using large mesh (5 1/2-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 could 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 could 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 could 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 could 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, the vessel could 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 would have 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 could 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 could 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 would be able to 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 would be able to 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. Trip limits for vessels using fixed gear in the SFMA would remain at 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 could 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 would be able to land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per scallop DAS.

#### Minimum Size Limits

At FMP implementation, 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 would be prohibited.

Beginning on May 1, 2000, in Year 2 of the FMP, the minimum size limit for vessels fishing or landing in the SFMA, only, would 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 would be published in the **Federal Register** specifying the SFMA size limit at 17 inches (43.2 cm) total length or 11 inches (27.9 cm) tail length.

#### Gillnet Limits

A vessel issued a monkfish limited access permit or fishing under a monkfish DAS would be able to 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 could fish any combination of monkfish, roundfish, and flatfish gillnets, up to 160 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets was consistent with the limitations of § 648.82(k)(1)(i) and that the nets were tagged in accordance with the regulations, as specified in § 648.82. Nets could not be longer than 300 ft (91.44 m), or 50 fathoms, in length. Beginning May 1, 1999, all monkfish gillnets fished, hauled, possessed, or deployed by a vessel fishing for monkfish under a monkfish DAS would

be allowed one tag per net, with one tag secured to every other bridle of every net within a string of nets. Tags would be obtained as described in § 648.4.

#### Time out of the Fishery

Vessels with Category A or B permits (i.e., "monkfish-only") would be required to declare out of the monkfish fishery and could not use a monkfish DAS for a continuous 20-day block during the months of April, May, and June. Such vessels could engage in other fisheries in which they may legally participate, but they could 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) would 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, would be prohibited from possessing monkfish. Vessels that target species other than groundfish and monkfish would, however, be allowed to participate in exempted fisheries during the mandatory groundfish tie-up periods. Multispecies vessels with a category C or D monkfish permit would not be required to comply with the time-out requirements described here for monkfish-only vessels.

#### Framework Adjustment Process

Many management measures in the FMP would be adjustable by framework action. The effectiveness of the management program depends on uncertain factors that may change over time. Achieving the FMP's mortality objectives may require at least annual adjustments to the management measures. It is, therefore, necessary to have an administrative mechanism in place that fulfills the Councils' public input and notification requirements while maximizing flexibility and responsiveness.

The framework adjustment process would allow changes to be made in the regulations in a timely manner without going through the plan amendment process. It would provide a formal opportunity for public comment that substitutes for the customary public comment period provided by publishing a proposed rule. If changes to the management measures were contemplated in the FMP and there were sufficient opportunity for public comment on the framework action, NMFS could bypass the proposed rule stage and publish a final rule in the **Federal Register**.

The framework adjustment process would include annual reviews by a Monkfish Monitoring Committee (MMC), which would evaluate the effectiveness of the FMP to meet the fishing mortality and rebuilding targets. The MMC would develop management options for consideration and approval by the Councils and the Councils would be required to submit a recommendation to the Regional Administrator by February 7 of each year to implement the adjustment at the beginning of the fishing year. The Regional Administrator could select measures recommended by the MMC that had not been rejected by both Councils if the Councils failed to submit a recommendation. Adjustable management measures would 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 frameworkable measures in 50 CFR 648.90 and 50 CFR 648.55.

#### Two Management Areas

The FMP proposes two management areas, separated by a line that roughly runs along Georges Bank from Cape Cod, MA to the Hague Line. This line and the rationale for two management areas are explained in greater detail in the FMP. Although tagging and DNA component analysis would provide definitive information about stock separation, monkfish in the northern and southern areas display different growth, maturation, and recruitment characteristics. Scientists believe that monkfish migration between areas is low. These areas are essential because of the predominance of different fisheries that occur in each and to evaluate the FMP's effectiveness in meeting separate mortality reduction targets.

#### Restrictions on Liver Landings to Prevent High-grading

Landings of monkfish livers would be restricted to 25 percent of the total weight of monkfish tails or 10 percent of the weight of whole monkfish, whichever is applicable. This measure is proposed to prevent high-grading of the more valuable livers while vessels comply with the monkfish trip and size limits.

#### A "Running Clock" Procedure

The "running clock" provision would allow vessels called into the monkfish

DAS program to avoid discarding fish if their trips are unexpectedly cut short or they have an unexpectedly high catch at the end of a trip. Vessels would be able to call in a "hail weight" to let the monkfish DAS clock run to account for the overage. This measure would begin on May 1, 2000, when the directed fishery trip limits are implemented.

#### Minimum Mesh and Gear Restrictions

Vessels that fish while they are called into the monkfish DAS program would be required to 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. This mesh requirement is proposed to reduce the bycatch of groundfish and other species while a vessel is on a monkfish DAS. Vessels that have a category C or D permit and a limited access sea scallop permit would not be able to use a dredge during a monkfish DAS, as most monkfish caught with a scallop dredge are less than the proposed minimum size limit for monkfish.

#### Measures of Concern

The FMP would establish some measures that differ between two fishery management areas (the NFMA and the SFMA), a factor which contributes to the complexity of the proposed regulations. Although public comments are sought for all measures, NMFS is particularly interested in public comment on the following measures to determine their approvability:

The first measure is the "running clock" for vessels fishing under a Monkfish DAS that would allow vessels called into the monkfish DAS program to avoid discarding fish if their trips are unexpectedly cut short or if they have an unexpectedly high catch at the end of a trip. This measure would begin on May 1, 2000, when the directed fishery trip limits are implemented, at which time vessels would be able to call in a "hail weight" to let the monkfish DAS clock run to account for the overage. This measure would be both an administrative and enforcement burden and, although it may reduce discards somewhat, it is not expected to provide significant conservation value. In fact, it could encourage vessels to target monkfish. It would also conflict with the running clock for GOM cod if both cod and monkfish are caught on the same trip.

A second measure concerns the allowable monkfish trip limits for

vessels fishing during a multispecies DAS after April 30, 2002. Such vessels with a Category C or D monkfish permit would be allowed 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. The 25 percent of total weight of fish-on-board option could be burdensome and time consuming because it would require an enforcement agent to stand by and observe a trip off-loading to determine compliance. NMFS is concerned that this could be an inefficient use of limited enforcement resources and could compromise the ability to monitor and enforce allowable monkfish landings.

A third measure pertains to vessels without a limited access monkfish permit when under a multispecies DAS in the NFMA beginning May 1, 1999, or with the date the final rule implementing the FMP is effective, whichever comes first. Such vessels would also be allowed 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. Again, the 25 percent of total weight of fish-on-board option could compromise the ability to monitor and enforce allowable monkfish landings.

#### Classification

At this time, NMFS has not determined whether the FMP that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable law. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

The Councils prepared an FEIS for the FMP describing the possible impacts on the environment as a result of this rule. This FMP is expected to have a significant impact on the human environment. A notice of availability for the Final Environmental Impact Statement was published on January 15, 1999 (64 FR 2639). A copy of the FEIS may be obtained from NEFMC (see ADDRESSES).

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the FSEIS.

In compliance with the Regulatory Flexibility Act, the Council has prepared an IRFA as part of the RIR contained in the FMP that concludes that this proposed rule would have

significant economic impacts on a substantial number of small entities. The measures proposed are restrictive, and impacts on the industry are expected to be significant. In the early years of the program, some vessels may be unable to cover their costs in part because of these restrictions and because of the poor condition of the stocks. Such vessels are expected to leave the fishery. Relative to the status quo, however, this proposal produces positive significant 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.

The proposed action would 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. The proposed action would reduce overall revenues by 69 percent compared to the status quo.

The impact of the proposed action would not be uniform for all vessels or all sectors. Instead, the action would 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 would 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 would, therefore, experience greater effects than other groups.

The negative effects of the non-selected alternatives would be greater than those of the proposed measures. Projected revenues from fishing would be positive beginning in the year 2009, which would create demand for other goods and services in the area and lead to increased production and employment. The overall impacts would be positive. The proposed action is 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 recreational sector is not expected to be negatively impacted by this action.

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 proposed rule contains 19 new collection-of-information requirements subject to the Paperwork Reduction Act and have been submitted to OMB for approval. The public reporting burden for these collection-of-information requirements are indicated in the parentheses in the following statements and include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: whether this proposed 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).

The new requirements are:

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

Monkfish incidental catch permits (30 minutes/response). In subsequent years, permit renewal (15 minutes/response).

Permit appeals (180 minutes/response).

Vessel replacement (180 minutes/response).

Vessel upgrade (180 minutes/response).

Retention of vessel history (30 minutes/response).

Operator permit (60 minutes/response).

Dealer permit (5 minutes/response).

Dealer landing report (5 minutes/response(trip)).

Dealer employment report (2 minutes/response).

Gillnet designations—declaration into the gillnet fishing category (10 minutes/response).

Call-in, call-out (DAS reporting) (2 minutes/response).

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

Notification of transiting (1 minute/response if made with hail, 3 minutes/response if separate call).

Vessel trip reports (5 minutes/response).

Hail weight reports (3 minutes/response).

Net tagging requirements (1 minute to attach 1 tag, 2 minutes to notify of lost tags and request replacement).

Good Samaritan credits (30 minutes/response).

Declarations of blocks of time out of the fishery (3 minutes/response).

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 8, 1999.

**Gary C. Matlock,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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 § 648.1, 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 definition for “Out of the multispecies fishery or DAS

program” is removed, and the definitions “Day(s)-at-Sea (DAS)”, “Fishing year”, “Monkfish”, “Prior to leaving port”, “Sink gillnet or bottom-tending gillnet”, “Tied up to the dock”, “Upon returning to port”, and “Vessel Monitoring System” are revised, and the definitions for “Councils”, “Monkfish gillnets”, “Monkfish Monitoring Committee”, “Out of the monkfish fishery” and “Out of the multispecies fishery” 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 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 will be elected by the Committee from within its ranks, subject to the approval of the chairmen 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*, for purposes of the call-in notification system for the NE multispecies and monkfish fisheries, means 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 May 1, 1999)—(A) Eligibility.* A vessel is eligible to qualify for 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 must have landed ≥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 must have landed ≥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 must have landed ≥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 must have landed ≥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 is eligible to qualify for 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 eligible to qualify for 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 [insert the date of publication of the final rule] 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 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 [insert the date of publication of the final rule], 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 paragraph (a)(9)(i)(A)(2) and (4) of this section, may qualify and fish under the original permit category. (G)

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

(H) *Vessel baseline specification.* See paragraph (a)(3)(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 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. In the event the application is denied, the applicant may appeal in accordance with requirements specified in paragraph (a)(9)(i)(J) 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 May 1, 1999).* A vessel of the United States 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).

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 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; and a new paragraph (b)(1)(iii) is added to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

(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 of any vessel issued a moratorium 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 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).

(iii) *Owners of party and charter boats.* The owner of any party or charter boat issued a summer flounder or scup permit other than a moratorium permit and carrying passengers for hire shall maintain on board the vessel and submit an accurate daily fishing log report for each charter or party fishing trip that lands summer flounder or scup, unless such a vessel is also issued a moratorium permit for summer flounder, a permit for sea scallop, or NE multispecies or monkfish, or a permit for mackerel, squid or butterfish, or a moratorium permit for scup, or a permit for black sea bass, in which case a

fishing log report is required for each trip regardless of species retained. If authorized in writing by the Regional Administrator, a vessel owner may submit reports electronically, for example, by using 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; gear fished; quantity and size of gear; chart area fished; average depth; latitude/longitude (or loran station and bearings); average tow time duration; count by species of all species landed or discarded; 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)(H)(3) and (a)(9)(i)(J) 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 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 DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(b) and (c) shall be deemed in the 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 holding 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 limit specified in § 648.94 applicable to a vessel issued a limited access monkfish permit, or in excess of the trip limits specified in § 648.94(b) and (c) applicable to a vessel with a monkfish 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 more than the landing limit of monkfish specified in § 648.94 after using up the vessel's annual monkfish DAS allocation or when not participating in the monkfish DAS program pursuant to § 648.92.

(12) If fishing with 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. Revise the heading of § 648.80 to read as follows:

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

\* \* \* \* \*

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. New §§ 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 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°03' 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 remainder of the trawl net may contain mesh that is no smaller than the regulated mesh specified by § 648.80(a)(2)(i), (b)(2)(i), or (c)(2)(i) of the Northeast multispecies regulations, depending upon 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, mesh size may be no smaller than allowed under regulations regarding mesh size for the NE Multispecies FMP at § 648.80(a)(2)(i), (b)(2)(i), or (c)(2)(i), depending upon 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.

(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 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 ft<sup>2</sup> (0.81 m<sup>2</sup>)).

#### § 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. 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.* 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 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 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 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, 1999, 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 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 are subject to the following minimum fish sizes (total length and tail length):

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 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 will be 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 will be ignored. If the fourth dorsal spine or the tail is not intact, the minimum size will be 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 or landing in the SFMA only 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 SFMA size limit at 17 inches (43.2 cm) total length/11 inches (27.9 cm) tail length.

(2) *Vessels fishing in the NFMA.* An adjustment to the minimum size possession limits for vessels catching or landing fish in the SFMA under paragraph (b)(1) of this section will not affect the minimum size possession limits for vessels catching fish only in or from the NFMA, which will remain as described in paragraph (a)(1) of this section. When 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 its intent to fish in the NFMA may transit the SFMA providing that it complies with the transiting provisions described in § 648.94(e) and provided that it does not fish for or catch monkfish 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 101.2 lb (46 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 exclusively using 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.* The procedures in § 648.86 for administering the trip limit for cod under the NE Multispecies FMP apply to landings of monkfish during a monkfish DAS.

(A) A vessel owner or operator may not exceed the monkfish trip limit based on monkfish DAS accrued at the time of landing unless the vessel has sufficient monkfish DAS to account for such overage and the landing of such overage is consistent with § 648.86. Vessels calling-out of the monkfish DAS program under § 648.10(c)(3) that have utilized only part of a monkfish DAS (less than 24 hours) may land up to an additional full daily trip limit of monkfish as specified in paragraphs (b)(2)(iii), (iv), and (v) of this section for that part of a monkfish DAS; however, such vessels may not end any subsequent trip with monkfish on board within the 24-hour period following the

beginning of the part of the monkfish DAS utilized (e.g., a vessel that has called-in to the monkfish DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m. (accruing a total of 25 hours) may legally land up to twice the trip limit of monkfish as specified in paragraphs (b)(2)(iii), (iv), and (v) of this section, but the vessel may not end any subsequent trip with monkfish on board until after 3 p.m. on the following day (Wednesday)).

(B) *Landing in excess of trip limits.* A vessel subject to the monkfish landing limit restrictions described in paragraphs (b)(2)(iii), (iv) and (v) of this section may come into port with and offload monkfish in excess of the landing limit as determined by the number of monkfish DAS elapsed since the vessel called into the monkfish DAS program, provided that the landing of such overage is consistent with § 648.86, and provided that:

(1) The vessel operator does not call out of the monkfish DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port to engage in fishing, unless transiting as allowed in paragraph (e) of this section, until sufficient time has elapsed to account for and justify the amount of monkfish harvested at the time of offloading, regardless of whether all of the monkfish on board is offloaded (e.g., a vessel with a Category A or Category C permit that has called-in to the monkfish DAS program at 3 p.m. on Monday that fishes and comes back into port at 4 p.m. on Wednesday of that same week with 6,000 lb (2,722 kg) tail-weight or 19,920 lb (9,036 kg) whole weight of monkfish—or a vessel with a Category B or Category D permit that has called-in to the monkfish DAS program at 3 p.m. on Monday that fishes and comes back into port at 4 p.m. on Wednesday of that same week with 4,000 lb (1,814 kg) tail-weight or 13,280 lb (6,024 kg) whole weight of monkfish and offloads some or all of its catch—cannot call out of the monkfish DAS program or leave port until 3:01 p.m. the next day, Thursday (i. e., 3 days plus one minute)); and

(2) Upon returning to port and before offloading, the vessel operator notifies the Regional Administrator and provides the following information: Vessel name and permit number, port landed, owner and caller name, monkfish DAS confirmation number, phone number, the hail weight of monkfish or monkfish tails on board, and the amount of monkfish to be offloaded, if any. A vessel that has not exceeded the landing limit and is offloading and ending its trip by calling

out of the monkfish DAS program does not have to report under this call-in system. Also, calling out of a fishery's DAS program when fishing under DAS for two fisheries at the same time may be done independently of each fishery. For example, a vessel that has been fishing under a multispecies or scallop DAS and a monkfish DAS at the same time and is reporting an average in its monkfish landing limit does not have to call out of its multispecies or scallop DAS, and vice-versa.

(C) A vessel that has not exceeded the monkfish landing limit restrictions described in paragraphs (b)(2)(iii) and (iv) of this section and that is offloading some or all of its catch without calling out of the monkfish DAS program under § 648.10(c)(3) is subject to the call-in requirement described in paragraph (b)(2)(vi)(B)(2) of this section.

(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).

(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: 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). A vessel that has exceeded the monkfish landing limit as specified in paragraphs (b)(2)(iii), (iv), and (v) of this section and is, therefore, subject to remain in port for the period of time described in paragraph (b)(2)(vi)(B) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator either at the time the vessel reports its hailed tail-weight or whole weight of monkfish or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.81(e), and may not have any fish on board the vessel.

(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.

#### § 648.96 Monkfish framework specifications.

(a) *Annual review.* The Monkfish Monitoring Committee (MMC) will 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 goals and objectives.

(1) The MMC will 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 MMC will recommend target TACs and develop options necessary to achieve

the Monkfish FMP goals and objectives, which may include a preferred option. The MMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MMC 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 (possibly expressed as a daily limit and possibly administered via a running clock); 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 presently included in §§ 648.55 and 648.90.

(3) The Councils will review the recommended target TACs and all of the options developed by the MMC and other relevant information, consider public comment, and develop a recommendation to meet the Monkfish FMP 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 MMC. The oversight committee would review the options developed by the MMC 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 objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MMC unless rejected by either Council, provided such option meets the Monkfish FMP 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 will 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. Included in the Councils' recommendation will be supporting documents, as appropriate, concerning the environmental and economic

impacts of the proposed action and the other options considered by the Councils. Documentation and analyses for the framework adjustment will be available at least 2 weeks before the first of the final two meetings at each Council. Management adjustments or amendments for monkfish will 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 will be published in the **Federal Register** as a proposed rule. The **Federal Register** notification of the proposed action will 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 objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**. If the Regional Administrator concurs that the recommendation meets the Monkfish FMP 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 will 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* about a month before each fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the Monkfish FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the MMC options reviewed and not rejected by either Council, provided that the option meets the Monkfish FMP 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 MMC, 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 will be published as a final rule in the **Federal Register**.

(b) *Three-year review of biological objectives and reference points.* The MMC will meet on or before November 15, 2001, to evaluate threshold and target biological reference points. If adjustments are required, a framework action will be initiated to replace the existing ("default") measures scheduled to take effect on May 1, 2002 (Year 4). The framework process would include a comprehensive evaluation, conducted by the MMC 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 would 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 will require at least one initial meeting (the agenda must include notification of the framework adjustment proposal) and at least two Council meetings, one at each Council. Documentation and analyses for the framework adjustment will be available at least 2 weeks before the first of the final two meetings at each Council. Management adjustments or amendments for monkfish will require majority approval of each Council for submission to the Secretary.

(1) *Adjustment process.* After a management action has been initiated, the Councils will develop and analyze appropriate management actions over the span of at least two Council meetings, one at each Council. The Councils will 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 (possibly expressed as a daily limit and possibly administered via a running clock); 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 presently 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 will 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) *Regional Administrator action.* If the Councils' recommendation includes adjustments or additions to management measures and, after reviewing the Councils' recommendation and supporting information:

(i) If the Regional Administrator 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, the measures will be issued as a final rule 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, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Councils' recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur, the Councils will 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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