

plus \$.10 per page to \$25.00 per request and \$.25 per page. All other fees in the Appendix would remain the same.

#### Access to Information in Comments

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as "CBI." Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. FMCS may disclose information not marked confidential without prior notice. All written comments will be available for inspection in Room 704 at the Washington, DC address above from 8:30 am to 4:30 pm, Monday through Friday, excluding legal holidays.

#### Electronic Access and Filing

All comments and data in electronic form must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through e-mail.

#### Regulatory Flexibility Act

The Director, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The fees assessed by FMCS for requests for panels are nominal and should not cause any significant economic effect on small entities which may request arbitration panels..

#### Executive Order 12866

This regulation has been deemed significant under Section 3(f)(3) of Executive Order 12866 and as such has been submitted to and reviewed by the Office of Management and Budget.

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small Governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the

economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with Foreign-based companies in domestic and export markets.

#### List of Subjects in 29 CFR Part 1404

Arbitration, Arbitration fees.

For the reasons set forth in the preamble, FMCS proposes to amend the Appendix to 29 CFR part 1404 as follows:

#### PART 1404—ARBITRATION SERVICES

1. The authority citation for part 1404 continues to read as follows:

**Authority:** 29 U.S.C. 172 and 29 U.S.C. 173 *et seq.*

2. Appendix to part 1404 is revised to read as follows:

#### Appendix to Part 1404—Arbitration Policy; Schedule of Fees

Annual listing fee for all arbitrators—\$100 for the first address; \$50 for the second address

Request for panel of arbitrators processed by FMCS staff—\$50.00

Request for panel of arbitrators processed on-line—\$30.00

Direct appointment of an arbitrator when a panel is not used—\$20.00 per appointment  
List and biographic sketches of arbitrators in a specific area—\$25.00 per request plus \$.25 per page.

**John J. Toner,**  
*Chief of Staff.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 020409080-2277-06; I.D. 101802B]

RIN 0648-AP78

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Regulations Governing Northeast Multispecies and Monkfish Days-at-Sea

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

**ACTION:** Proposed rule; request for comment.

**SUMMARY:** NMFS proposes a regulatory amendment that would revise the monkfish days-at-sea (DAS) regulations found at 50 CFR part 648 in order to provide vessels possessing limited access Category C or D monkfish permits the opportunity to fish their full allocation of up to 40 monkfish DAS, regardless of the amount of Northeast (NE) multispecies DAS available to an individual vessel as of August 1, 2002. These regulations were modified as part of a August 1, 2002, interim final rule implementing the Settlement Agreement Among Certain Parties (Settlement Agreement), ordered by the U.S. District Court for the District of Columbia in a Remedial Order issued on May 23, 2002. However, the August 1, 2002, interim final rule unintentionally restricted monkfish DAS allocated under the Monkfish Fishery Management Plan (Monkfish FMP) for limited access Category C or D monkfish vessels that used NE multispecies DAS not in conjunction with a monkfish DAS, during May through July, 2002. This regulatory amendment would also revise ambiguous language to clarify that a vessel fishing under a Southern New England (SNE) and Mid-Atlantic (MA) Yellowtail Flounder Possession/Landing Letter of Authorization (LOA) may fish in the Gulf of Maine (GOM) or Georges Bank (GB) Regulated Mesh Areas (RMAs), provided the vessel abides by the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat.

**DATES:** Public comments must be received on or before December 10, 2002.

**ADDRESSES:** Comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on regulatory amendment." Comments may also be submitted via facsimile (fax) to 978-281-9135. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Regulatory Impact Review (RIR) prepared for this action are available from the Regional Administrator. The document is also accessible via the Internet at <http://www.nero.nmfs.gov>.

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

**SUPPLEMENTARY INFORMATION:**

## Background

NMFS published an interim final rule on August 1, 2002 (67 FR 50292), to reduce overfishing consistent with and pursuant to section 305(c)(3) of the Magnuson-Stevens Fishery Conservation and Management Act, while Amendment 13 to the Northeast Multispecies Fishery Management Plan is being developed. Under the provisions of section 305(c)(3) of the Magnuson-Stevens Act, interim measures shall remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the **Federal Register** for one additional period of not more than 180 days, provided that the public has had an opportunity to comment on the interim measures. Because of the Court's Remedial Order, it is very likely that NMFS will extend the interim final rule beyond the first 180-day period. NMFS will announce any extension by publishing a notification in the **Federal Register**. Because this proposed rule will amend the August 1, 2002, interim rule, this proposed rule, if approved and implemented by NMFS, will remain in effect for the duration of the August 1, 2002, interim final rule, including any extensions.

The August 1, 2002, interim final rule implemented additional measures intended to reduce overfishing on species managed under the NE Multispecies Fishery Management Plan as specified in the Settlement Agreement, including a freeze on the use of DAS and a 20-percent reduction in effort from the highest amount of DAS fished during the fishing years 1996–2000. Under the monkfish DAS regulations implemented through the Monkfish FMP (64 FR 54732, October 7, 1999), all limited access monkfish vessels are allocated up to 40 monkfish DAS per fishing year (May 1 through April 30). Vessels that hold a limited access monkfish Category C or D permit (*i.e.*, vessels that possess both a limited access monkfish and limited access NE multispecies DAS permit) must run both their monkfish DAS clock and their NE multispecies DAS clock concurrently when fishing under a monkfish DAS. Limited access monkfish vessels that do not have a limited access NE multispecies permit (*i.e.*, Category A

and B vessels) may fish their monkfish-only DAS in a fishery exempted under the 5-percent regulated multispecies bycatch provisions. Implementation of the freeze and reduction in DAS without regard for monkfish DAS, however, have restricted certain limited access monkfish vessels to fishing only the number of monkfish DAS equivalent to the number of NE multispecies DAS allocated under the August 1, 2002, interim final rule, minus the NE multispecies DAS fished during May - July, 2002. There was no intent specified in the Settlement Agreement to further restrict monkfish harvest through DAS or other measures, when NMFS revised § 648.92(b)(2) in the August 1, 2002, interim final rule. Therefore, NMFS intended to enable limited access Category C or D monkfish vessels to fish their full allocations of 40 DAS.

The August 1, 2002, interim final rule, as currently written, specifies that Category C or D monkfish vessels that have been allocated fewer than 40 NE multispecies DAS may fish, as monkfish-only DAS, those monkfish DAS equal to the difference between their NE multispecies DAS allocation and their monkfish DAS allocation for the fishing year May 1 through April 30. However, this does not account for those vessels that used NE multispecies DAS prior to August 1, 2002, and, as a result, had fewer unused NE multispecies than unused monkfish DAS as of August 1, 2002. This omission was recognized by NMFS shortly after implementation of the August 1, 2002, interim final rule. Because such vessels would not be provided the opportunity to fish their full 40 monkfish DAS allocations for the 2002 fishing year, NMFS is proposing this regulatory amendment to revise § .92(b)(2). This proposed regulatory amendment would enable Category C or D monkfish vessels to fish their monkfish DAS that were unused as of August 1, 2002, regardless of how many NE multispecies DAS are available to them. Therefore, for the 2002 fishing year, this regulatory amendment would authorize a vessel to fish its monkfish-only DAS (*i.e.*, monkfish DAS that do not have to be fished concurrently with a NE multispecies DAS) equal to the

difference between the number of its unused monkfish DAS and its unused NE multispecies DAS as of August 1, 2002, in addition to the unused monkfish DAS associated with the vessel's unused NE multispecies DAS as of August 1, 2002. An example of how the monkfish-only DAS are calculated under the current interim rule versus this proposed regulatory amendment for the 2002 fishing year follows.

Under the Current Interim Rule - For this example, a vessel was allocated 20 NE multispecies DAS pursuant to the August 1, 2002, interim rule. The vessel used 10 NE multispecies DAS from May 1 - July 31, 2002, but did not use any monkfish DAS. Under the August 1, 2002, interim rule calculation, the vessel can fish, as monkfish-only DAS, the difference between 40 (monkfish DAS) and the number of NE multispecies DAS allocated. In this case, the resulting number is 20 monkfish-only DAS (40 monkfish DAS - 20 allocated NE multispecies DAS = 20 monkfish-only DAS). However, because the vessel has only 10 unused NE multispecies DAS, it can only fish 10 of the remaining 20 monkfish DAS (which must be linked to NE multispecies DAS), plus the 20 monkfish-only DAS. Therefore, the vessel can use only 30 monkfish DAS out of its 40 allocated monkfish DAS for the 2002 fishing year under the August 1, 2002, interim final rule.

Under the Proposed Regulatory Amendment - Under this proposed regulatory amendment, assuming the same facts as above, the calculation of monkfish-only DAS would be based on the difference between the vessel's unused monkfish DAS and its unused NE multispecies DAS as of August 1, 2002. This would result in 30 monkfish-only DAS (40 unused monkfish DAS - 10 unused multispecies DAS = 30 monkfish-only DAS). The vessel could also fish an additional 10 monkfish DAS in combination with its 10 unused multispecies DAS, for a total of 40 monkfish DAS available for the 2002 fishing year.

This example, and the calculations of monkfish-only DAS under the August 1, 2002, interim final rule and this regulatory amendment are also illustrated in Table 1.

TABLE 1. CALCULATION OF MONKFISH-ONLY DAS UNDER INTERIM FINAL RULE AND PROPOSED REGULATORY AMENDMENT.

A	B	C	D	E	F	G	H
Monkfish DAS Allocated	Monkfish DAS used	Mult. DAS Allocated	Mult. DAS Used	Unused Monkfish DAS	Unused Mult. DAS	Monkfish only DAS	Total Monkfish DAS Available for 2002 FY

August 1, 2002, Interim Final Rule

TABLE 1. CALCULATION OF MONKFISH-ONLY DAS UNDER INTERIM FINAL RULE AND PROPOSED REGULATORY AMENDMENT.—  
Continued

	A	B	C	D	E	F	G	H
40		0	20	10	40 (A - B)	10 (C - D)	20 (A - C)	30 (F + G)
Proposed Regulatory Amendment								
40		0	20	10	40 (A - B)	10 (C - D)	30 (E - F)	40 (F + G)

As under the current interim rule, vessels would be required to fish their monkfish-only DAS under the same provisions as limited access monkfish Category A and B vessels under these proposed regulations. Limited access monkfish Category A and B vessels are required to fish their monkfish DAS in an existing monkfish exempted fishery, which are specified under § 648.81. A map of these exemption areas is also available from the Northeast Regional Office of NMFS (*see* contact information).

This regulatory amendment would not apply to the 2003 fishing year. For the 2003 fishing year, vessels that have been allocated fewer NE multispecies DAS than monkfish DAS would fish the difference in DAS as monkfish-only DAS, as stipulated in the August 1, 2002, interim final rule.

This regulatory amendment would also revise ambiguous language at § 648.86(h)(2) (ii) to clarify that a vessel fishing under a SNE and MA Yellowtail Flounder Possession/Landing LOA may fish in the GOM or GB RMAs, provided the vessel abides by the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat. Existing regulations authorize vessels that possess a SNE and MA Yellowtail Flounder Possession/Landing LOA to transit the GOM and GB RMAs, if the gear is stowed properly on board the vessel. However, this regulation neither prohibits nor allows such vessels to fish in the GOM or GB RMAs under the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs. The intent of the August 1, 2002, interim final rule was to allow vessels possessing a SNE and MA Yellowtail Flounder Possession/Landing LOA to fish any part of a trip in the GOM or GB RMAs, provided that they abide by the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat. Therefore, this proposed regulatory amendment would revise the language at § 648.86(h)(2)(ii) to clarify that vessels possessing a SNE and MA Yellowtail Flounder Possession/Landing LOA may fish in the GOM or GB RMAs under the more restrictive yellowtail possession limits of the SNE and MA RMAs.

#### Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulatory amendment would impact those vessels possessing a limited access Category C or D monkfish permit that had fewer NE multispecies DAS than monkfish DAS as of August 1, 2002. Currently, there are 651 vessels that hold a limited access Category C or D monkfish permit, all of which are considered to be small entities. However, an analysis of NMFS' DAS database shows that only 141 vessels had fewer monkfish DAS than NE multispecies DAS remaining as of August 1, 2002, and therefore would be impacted by this proposed action. These 141 vessels would be allocated a total of 2,700 monkfish-only DAS; DAS that could be fished separate from a NE multispecies DAS, once a vessel's NE multispecies DAS have been utilized. The current interim rule impacts 121 vessels that have been allocated fewer monkfish DAS than NE multispecies DAS for the 2002 fishing year. These 121 vessels have been allocated a total of 2,200 monkfish-only DAS. Therefore, this proposed rule would provide approximately 20 additional vessels with the opportunity to utilize their full allocation of 40 monkfish DAS during the 2002 fishing year. The additional number of vessels impacted by this action is not considered to be substantial.

This proposed rule may also impact all vessels that hold a limited access NE multispecies permit, since it clarifies existing regulations concerning yellowtail flounder possession restrictions. There are currently 1,363 vessels that possess a limited access NE multispecies permit. These vessels might realize a slight positive impact, since it would be clear in the regulations that they could fish in the GOM and GB RMAs while in possession of a SNE and MA Yellowtail Flounder

Possession/Landing LOA, but under the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat.

The proposed regulatory amendment will result in increased revenues to vessels participating in the directed monkfish fishery without increasing costs. Therefore, this regulation does not significantly reduce profit for a substantial number of small entities. Furthermore, the objective of the proposed regulatory amendment is to provide all limited access monkfish vessels with equal opportunity to use their full annual allocation of 40 monkfish DAS. As a result, this action will not affect small entities disproportionately, nor will it lessen their long-term profitability. In summary, this proposed regulatory amendment makes only minor revisions to the August 1, 2002, interim final rule. Therefore, a regulatory flexibility analysis was not prepared.

This proposed rule does not duplicate, overlap or conflict with other Federal rules, and does not contain new reporting or recordkeeping requirements. This proposed rule also takes into consideration the monkfish regulations under § 648.92 in order to be consistent with the objectives of the Monkfish FMP.

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

Fisheries, Fishing, Reporting and recordkeeping requirements

Dated: November 19, 2002.

**Rebecca Lent,**

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

For the reasons set out in the preamble, 50 CFR part 648 is 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:** Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.86, paragraph (h)(2) (ii) is revised to read as follows:

**§ 648.86 Multispecies possession restrictions.**

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \*

(ii) The vessel does not fish south of 40°00' N. lat. for a minimum of 30 consecutive days (when fishing under the NE multispecies DAS program, or under the monkfish DAS program if the vessel is fishing under the limited access monkfish Category C or D provisions). Vessels subject to these restrictions may fish any portion of a trip in the GOM and GB Regulated Mesh Areas, provided the vessel complies with the possession restrictions specified under this paragraph (h). Vessels subject to these restrictions may also transit the SNE and MA Regulated Mesh Areas south of 40°00' N. lat., provided the gear is stowed in accordance with one of the provisions of § 648.23(b).

\* \* \* \* \*

3. In § 648.92, paragraph (b)(2) is revised to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) Category C and D limited access monkfish permit holders. (i) August 1, 2002 - April 30, 2003. 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, unless otherwise specified in this paragraph (b). A Category C or D vessel that had fewer unused multispecies DAS than unused monkfish DAS as of August 1, 2002, may fish under the limited access monkfish provisions for Category A or B vessels, as applicable, for the number of DAS that equal the difference between its unused monkfish DAS and unused multispecies DAS as of August 1, 2002. For such vessels, when the total allocation of multispecies DAS has been used, a monkfish DAS may be used without concurrent use of a multispecies DAS. (For example, if a monkfish Category D vessel has 10 NE multispecies DAS and 40 monkfish DAS remaining as of August 1, 2002, that vessel may use the remaining 30 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, once the remaining 10 NE multispecies DAS have been utilized. However, the vessel must fish the remaining 30 monkfish DAS under the regulations pertaining to a Category B vessel, and must not retain any regulated multispecies.)

(ii) Beginning May 1, 2003. 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, except when a Category C or D vessel that has an allocation of multispecies DAS under § 648.82(l) that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated multispecies DAS. For such vessels, when the total allocation of multispecies DAS have been used, a monkfish DAS may be used without concurrent use of a multispecies DAS. (For example, if a monkfish Category D vessel's multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 multispecies DAS would also be used. However, after all 30 multispecies DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated multispecies.)

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 02112272-2272-01; I.D. 110202D]

RIN 0648-AP88

**Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications**

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes a regulation to implement the annual harvest guideline for Pacific sardine in the U.S. exclusive economic zone off the Pacific coast for the fishing season January 1, 2003, through December 31, 2003. This

harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

**DATES:** Comments must be received by December 10, 2002.

**ADDRESSES:** Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. The report *Stock Assessment of Pacific Sardine with Management Recommendations for 2003* may be obtained at this same address.

**FOR FURTHER INFORMATION CONTACT:** James J. Morgan, Southwest Region, NMFS, 562-980-4036.

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

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC, and then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure are published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific sardine season begins on January 1 and ends on December 31 of each year.

The CPS Team, Subpanel, and SSC meetings as described above were held as in the past. The Team meeting took place at the Southwest Regional Office in Long Beach, CA, on October 8, 2002. A public meeting between the Team and the Subpanel was held at the same location that afternoon. The Council reviewed the report at its October-