

classification societies, including IACS members, be approved by the Coast Guard prior to conducting any work on a vessel in the United States.

### III. Discussion

In this notice, we are reopening the comment period for the NPRM to allow comments from all interested parties. The 2010 Act changed the applicability to require that all classification societies be approved by the Coast Guard prior to conducting any work on a vessel in the United States. Accordingly, in §§ 2.45–10(a), 2.45–15(a), and 2.45–30 of the proposed rule, we plan to delete all references to IACS members, in order to comply with our revised statutory authority. The 2010 Authorization Act requires IACS members to apply to the Coast Guard for approval under Title 46, United States Code, Section 3316(c), if they wish to continue performing work related to the certification of construction, repair, or alteration of vessels within the United States.

Dated: August 1, 2011.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards, U.S. Coast Guard.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 101119575–1397–01]

RIN 0648–BA46

#### Fisheries of the Northeastern United States; Monkfish; Framework Adjustment 7

**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 measures in Framework Adjustment 7 (Framework 7) to the Monkfish Fishery Management Plan (Monkfish FMP). The New England Fishery Management Council and Mid-Atlantic Fishery Management Council (Councils) developed Framework 7 to adjust the annual catch target (ACT) for the Northern Fishery Management Area (NFMA) to be consistent with the most recent scientific advice regarding the acceptable biological catch (ABC) for monkfish. The New England Council's

Scientific and Statistical Committee (SSC) has recommended a revision to the ABC based on information from a 2010 stock assessment (50th Northeast Regional Stock Assessment Review Committee (SARC 50)). Framework 7 would also specify a new day-at-sea (DAS) allocation and trip limits for the NFMA commensurate with the new ACT, and Framework 7 and would also adopt revised biomass reference points for the NFMA and Southern Fishery Management Area (SFMA), based on the recommendations of SARC 50 and the SSC.

**DATES:** Public comments must be received no later than 5 p.m., eastern standard time, on September 6, 2011.

**ADDRESSES:** An environmental assessment (EA) was prepared for Framework 7 that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Framework 7, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

You may submit comments, identified by 0648–BA46, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.
- *Fax:* (978) 281–9135, Attn: Jason Berthiaume.
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Monkfish Framework 7 Proposed Rule.”

*Instructions:* All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

#### FOR FURTHER INFORMATION CONTACT:

Jason Berthiaume, Fisheries Management Specialist, (978) 281–9177; fax: (978) 281–9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The monkfish fishery is jointly managed by the Councils, with the New England Council having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The NFMA and the SFMA. Details on the background and need for Amendment 5 and this framework are contained in the amendment and the preambles for the proposed (76 FR 11737; March 3, 2011) and final rules (76 FR 30265; May 25, 2011) for Amendment 5, and are not repeated here.

Amendment 5, which was partially approved by NMFS on April 28, 2011, was intended to bring the Monkfish FMP into compliance with the requirements of the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act requires that all fishery management plans contain annual catch limits (ACL) to prevent overfishing, and measures to ensure accountability. Among other measures, Amendment 5 implemented accountability measures (AMs) and ACLs, established biological and management reference points and control rules, and specified an ACT, DAS and trip limits for the SFMA.

However, NMFS disapproved Amendment 5's proposed ACT for the NFMA, and specification of DAS and trip limits to achieve that ACT. Amendment 5 proposed an ACT for the NFMA of 10,750 mt, an allocation of 40 DAS, and trip limits of 1,250 lb (567 kg) tail wt. per DAS for Category A and C vessels, and 800 lb (363 kg) tail wt. per DAS for Category B and D vessels based on the 2007 Data Poor Working Group (DPWG) Assessment, which were considered to be the best scientific information available at the time the Amendment 5 document was finalized by the Councils. Subsequent to the Councils taking final action on Amendment 5, the results of SARC 50 became available, which revealed new scientific information that, when included in the Councils' interim ABC approach, reduced the monkfish NFMA ABC. In response to the new assessment, the SSC revisited its previous ABC recommendation at a meeting in August 2010. The SSC, after much discussion concerning the uncertainty with the new assessment

and alternate methods for calculating ABC to account for this uncertainty, agreed to maintain the existing interim ABC approach it previously recommended. Using this interim ABC approach, the SSC recalculated the recommended ABC in Amendment 5 to incorporate the results of SARC 50. Based on the recalculation of the ABCs, the SFMA's ACT and associated DAS and trip limit measures were found to still be consistent with the new ABC and ACL, and they were approved by NMFS in Amendment 5. The recalculated ABC for the NFMA, on the other hand, was reduced from 10,750 mt to 7,592 mt, creating an inconsistency with the Amendment 5 recommended ABC, ACT, and associated NFMA DAS and trip limit measures. Based on this inconsistency, NMFS disapproved Amendment 5's proposed specifications for the NFMA.

This disapproval left current measures in effect for the NFMA until they are superseded by a revised ACT and specification of DAS and trip limits as proposed in this action. Because it was too late for the Councils to revise Amendment 5's NFMA measures in a timely fashion for fishing year (FY) 2011, the Councils initiated Framework 7 in September 2010, to revise the ACT for the NFMA to be consistent with the most recent scientific advice. Leaving the current measures in place was considered as an acceptable interim measure because they are more conservative than measures being proposed by this framework. This framework reconfirms the SFMA ABC and associated specifications and management measures that were included in the approval and implementation of Amendment 5. This framework would also update the biomass reference points in the monkfish FMP to be consistent with the results of SARC 50.

## Proposed Measures

### 1. ACT

Framework 7 would adjust the ACT for the NFMA to be consistent with the most recent scientific advice regarding the monkfish NFMA ABC. The SSC recommended a revision of the NFMA ABC, based on SARC 50, to 7,592 mt. The proposed ACT for the NFMA in this framework adjustment is slightly higher than the current total allowable landing (TAL) in place for the NFMA. Because NFMA landings have been well below the TAL for the past 2 years (29 percent of the TAL in 2008, and 33 percent of the TAL in 2009) it is not expected that monkfish landings will exceed this proposed ACT before Framework 7 is

implemented. Any landings that occur between when Amendment 5 was implemented on May 25, 2011, and the time the Framework 7 final rule is effective would accrue against the ACT for the current FY and be used to trigger AMs, if necessary.

Three options (from 73 to 86.5 percent of the ABC) were considered by the Council for setting the NFMA ACT at a level below the revised ACL. The Councils' preferred alternative, and the alternative in this proposed rule, would set the ACT at 86.5 percent of the ABC, or 6,567 mt. Once implemented, this NFMA ACT would be midway between the current TAL and the ABC.

### 2. Specification of DAS and Trip Limits

The DAS allocations and trip limit options proposed in this action are calculated so as to achieve, but not go over the recommended ACT. The proposed trip limits for the NFMA for permit Categories A and C would be 1,250 lb (567 kg) and 600 lb (272 kg) for permit Categories B and D, with all categories having a DAS allocation of 40.

### 3. Revision to Biological Reference Points

This action would revise the biological reference points in the Monkfish FMP to be consistent with those recommended by the SSC and SARC 50. In the SARC 50 report, the Southern Demersal Working Group recommended an approach that would set biomass target reference points based on the long-term projected biomass (B) corresponding to the fishing mortality rate (F) at maximum sustainable yield, or its proxy, which for monkfish is  $F_{max}$ . This recommendation, along with the recommendation to set B threshold reference points at one-half of the target, would be more consistent with National Standard 1 Guidelines. This would establish a  $B_{target}$  of 52,930 mt for the NFMA and 74,490 mt for the SFMA, and  $B_{threshold}$  of 26,465 mt for the NFMA and 37,245 mt for the SFMA.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Monkfish FMP, Framework 7, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Pursuant to Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

The New England Council prepared an EA for Framework 7 to the Monkfish FMP that discusses the impact on the environment as a result of this rule. A copy of the EA is available from the Council (see **ADDRESSES**).

An IRFA has been prepared for this rule, as required by section 603 of the Regulatory Flexibility Act (RFA), that consists of the draft IRFA in Framework 7, this preamble, and the following summary. The IRFA describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from the New England Council (see **ADDRESSES**).

For purposes of the IRFA, all of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses (\$4.0 million in annual gross sales). Although multiple vessels may be owned by a single owner, available tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for purposes of analysis, each permitted vessel is treated as a single entity. Information on costs in the fishery is not readily available and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

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

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

The management measures proposed in Framework 7 have the potential to affect all Federally permitted monkfish vessels that are actively participating in the fishery. As of September 2009, there were 758 limited access monkfish permit holders and 2,156 open access permit holders. Of these, 573 limited access permit holders (76 percent) actively participated in the monkfish fishery during the 2008 FY, while only 504 open access permit holders (23 percent) actively participated in the fishery during this time period. Thus, this action is expected to impact at least 1,077 currently active monkfish permit holders.

The majority of the measures proposed in this action are specific to the NFMA, and, thus, would apply to

vessels that fish primarily in the NFMA. Of the 546 vessels that participated in the fishery in FY 2009, 232 reported fishing in the NFMA. Of the 232, 115 reported fishing only in the NFMA and 171 in both the NFMA and SFMA. Accordingly, this action would mainly impact approximately 232 vessels that fish in the NFMA.

### **Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives**

#### *1. ACT*

The purpose of establishing an ACT as a measure for triggering a proactive AM is to account for management uncertainty in the ability of management measures in the Monkfish FMP (mainly DAS and trip limits) to limit catch to the prescribed level. The ACT is set lower than the ACL to serve as buffer between the ACL and the ACT to account for management uncertainty, and is intended to prevent overfishing from occurring in the event management measures to limit catch are not entirely successful. Since the ACT incorporates discards, actions that reduce discards or management uncertainty would allow for the establishment of an ACT that is closer to the ACL, resulting in higher monkfish revenues and benefits to vessels, but only if the allocation is actually landed versus discarded or left uncaught.

The Councils considered three ACT alternatives which would set the ACT at 73 percent, 80 percent, and 86.5 percent of the monkfish NFMA ABC, or 5,550 mt, 6,074 mt, and 6,567 mt respectively. The proposed ACT is 6,567 mt, or 86.5 percent of the monkfish NFMA ABC, the highest of the three levels considered by the Councils. This level results in the potential for higher revenues than the other alternatives considered, while still maintaining a robust buffer between the ACT and ACL to account for management uncertainty. By setting the ACT at this level, it is likely, based on historical landings in the NFMA that vessels will harvest this amount, although in FY 2008 landings were only 71 percent of the proposed ACT.

The no action alternative would not establish the ABC, ACL, or ACT for the NFMA of the monkfish fishery, and, therefore, would be inconsistent with the Magnuson-Stevens Act and National Standard 1 Guideline requirements to do so. Although there is likely no direct economic effect of taking no action, it could have a negative economic impact if the long-term sustainability of the monkfish fishery were affected by not

establishing these management measures.

Actual quantification of the economic impacts of the proposed ACT requires specification of management measures, in the form of DAS and trip limits, to achieve the proposed ACT levels, as described below.

#### *2. Specification of DAS and Trip Limits*

A modified trip limit model was utilized to assess the impact of the DAS and trip limit options, under each ACT option, on monkfish revenues. The model is different from models used for prior monkfish actions in that it accounts for potential impacts on monkfish trips (higher retention and additional trips) resulting from increases in DAS and trip limits. A detailed description of the model was provided in Amendment 5 to the Monkfish FMP. Specification options comparable to those associated with the preferred NFMA ACT option were analyzed in Amendment 5 using FY 2008 data. This analysis is used to predict impacts of the revised DAS and trip limits under the proposed ACT levels in this framework adjustment.

The trip limit model was used to assess the impacts on monkfish revenues of the proposed DAS and trip limit options included in the framework on vessels fishing in only the NFMA, only in the SFMA, and in both management areas. For all alternatives, permit Categories A and C trip limits remain at 1,250 lb (567 kg), while the permit Categories B and D trip limits range from 465 lb (211 kg) to 686 lb (311 kg), and DAS allocations for all limited access permit types range from 31 to 45 DAS. For vessels fishing only in the NFMA, the trip limit model predicts that, under the proposed DAS and trip limit options for the NFMA, per trip average vessel return would increase from 0.2 percent to 1.7 percent, whereas average crew payment would increase from 0.5 percent to 1.6 percent, depending on different DAS allocations and trip limit alternatives. The increase in total monkfish revenue ranges from 0.8 percent to 16.1 percent under the proposed alternatives. Compared to the status quo, the proposed DAS and trip limits would maintain the current A and C Category permit holders trip limits at 1,250 lb (567 kg) and would increase B and D Category permit holders trip limits to 600 lb (272 kg), as well as increase DAS to 40 for both permit Categories. These measures would lead to a 0.5-percent increase in per trip average vessel return, 0.5-percent increase in crew payment, and 10.0-percent increase in total monkfish revenue. The maximum benefit in terms

of percentage increase in average vessel return and monkfish revenue is expected to result from option 3B, the Councils' proposed option 3C, which would increase trip limits for Category B and D permit holders while maintaining current trip limits for Category A and C permit holders and also increase the DAS allocation for both permit categories. Although option 3B could lead to a higher percent increase in average vessel return, the Councils preferred a higher trip limit rather than a higher DAS allocation, thus preferred option 3C.

Vessels fishing in both management areas would be simultaneously affected by DAS and trip limit alternatives proposed for the NFMA. Although vessels that fish in both the NFMA and the SFMA may be more likely to change fishing locations than those that fish solely in one area, the trip limit model assumes that these vessels will continue to fish in the same locations. The results of the trip limit model indicate that there is no single DAS and trip limit alternative combination for the NFMA that leads to a best outcome in terms of impact on average vessel return, average crew payment, and total monkfish revenue. The largest increase in monkfish revenue is realized under option 3B with an incidental limit of 300 lb (136 kg), a 1,250-lb (567-kg) trip limit for Category A and C vessels, a 470-lb (213-kg) trip limit for Category B and D vessels, and 45 DAS in the NFMA, in combination with the SFMA levels of a 50-lb (23-kg) incidental limit; 550-lb (249-kg) trip limit for A, C, and G vessels; 450-lb (204-kg) trip limit for B, D and H vessels; and 28 DAS in the SFMA. Under the proposed measures for NFMA, the monkfish revenue for the vessels fishing in both the NFMA and SFMA would increase by 17.4 percent.

#### *3. Biological Reference Point Alternatives*

The proposed action to change the biological reference points in the Monkfish FMP would have no immediate impact on vessels, since these changes do not directly change any management measures or modify vessel level aspects of the Monkfish FMP. However, the establishment of new reference points that are consistent with NS1 guidance would allow for better monitoring and management of the monkfish fishery, potentially resulting in positive effects on vessels in the future. The no action alternative would maintain the existing biological and management reference points in the Monkfish FMP. As a result, taking no action would result in no additional economic impacts beyond those

identified in earlier actions affecting this fishery.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 2, 2011.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, 50 CFR part 648 is 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 § 648.92, revise paragraph (b)(1)(i) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *General provision.* Limited access monkfish permit holders shall be allocated 40 monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless otherwise restricted by paragraph (b)(1)(ii) of this section or modified by § 648.96(b)(3), or unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iv) of this section. The annual allocation of monkfish DAS shall be reduced by the amount calculated in paragraph (b)(1)(v) of this section for the research DAS set-aside. Limited access NE multispecies and limited access sea scallop permit holders who also possess a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

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3. In § 648.94, revise paragraph (b)(1)(ii) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) *Category B and D vessels.* Limited access monkfish Category B and D vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 600 lb (272 kg) tail weight or 1,746 lb (792 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

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