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X. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require EPA consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 30, 2011.

Steven Bradbury,
Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1307 is added to subpart D to read as follows:

§ 180.1307 Bacteriophage of *Clavibacter michiganensis* subspecies *michiganensis*; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of lytic bacteriophage of *Clavibacter michiganensis* subspecies *michiganensis* produced in *Clavibacter michiganensis* subspecies *michiganensis* in or on tomato when applied as a bactericide in accordance with good agricultural practices.

[FR Doc. 2011–27042 Filed 10–25–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101119575–1554–02]

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: Final rule.

SUMMARY: This final rule implements measures that were approved in Framework Adjustment 7 to the Monkfish Fishery Management Plan. The New England Fishery Management Council and Mid-Atlantic Fishery Management Council developed Framework Adjustment 7 to adjust the annual catch target for the Northern Fishery Management Area to be consistent with the most recent

scientific advice regarding the acceptable biological catch for monkfish. The New England Council's Scientific and Statistical Committee recommended a revision to the acceptable biological catch based on information from the 50th Northeast Regional Stock Assessment Review Committee. Framework Adjustment 7 specifies a new days-at-sea allocation and trip limits for the Northern Fishery Management Area consistent with the new annual catch target, and establishes revised biomass reference points for the Northern and Southern Fishery Management Areas.

DATES: This rule is effective October 26, 2011.

ADDRESSES: An environmental assessment (EA) was prepared for Framework Adjustment 7 (Framework 7) that describes the proposed action and other alternatives considered, and provides an 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>.

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 New England and Mid-Atlantic Fishery Management Councils (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 Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (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 Fishery Management Plan (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

FMPs 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 annual catch target (ACT), days-at-sea (DAS), and trip limits for the SFMA.

However, NMFS disapproved the proposed ACT for the NFMA in Amendment 5, 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 was 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, a 2010 stock assessment (50th Northeast Regional Stock Assessment Review Committee (SARC 50)) became available, which revealed new scientific information that, when included in the Councils' interim acceptable biological catch (ABC) approach, reduced the monkfish NFMA ABC. In response to the new assessment, the New England Council's Scientific and Statistical Committee (SSC) revisited its previous ABC recommendation at a meeting in August 2010. The SSC, after much discussion concerning the uncertainty with the 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 the Amendment 5 proposed specifications for the NFMA. This disapproval left current measures in effect for the NFMA until superseded by a revised ACT and specification of DAS and trip limits

which is the purpose of this action. Because it was too late for the Councils to revise the Amendment 5 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 an acceptable interim measure because they are more conservative than measures being implemented by this framework. This framework reconfirms the SFMA ABC and associated specifications and management measures that were approved and implemented through Amendment 5. This framework also updates the biomass reference points in the Monkfish FMP to be consistent with the results of SARC 50.

Approved Measures

1. ACT

Framework 7 reduces the ACT for the NFMA to be consistent with the most recent scientific advice regarding the monkfish NFMA ABC. The SSC recommended a reduction of the NFMA ABC, based on SARC 50, to 7,592 mt. The ACT being implemented in this final rule is 86.5 percent of the ABC, or 6,567 mt. The ACT for the NFMA being implemented is slightly higher than the current total allowable landings (TAL) for the NFMA. Any landings that occur between when Amendment 5 was implemented on May 25, 2011, and the effective date of this final rule will be counted against the ACT for the current FY and will be used to determine whether AMs are triggered.

2. Specification of DAS and Trip Limits

The DAS allocations and trip limits implemented in this action are calculated to achieve, but not go over, the ACT. The trip limits for the NFMA for permit categories A and C will be 1,250 lb (567 kg) tail weight, and 600 lb (272 kg) tail weight for permit categories B and D, with all categories having an initial DAS allocation of 40 DAS. After accounting for the Monkfish Research Set-Aside (RSA) program, the final allocation is 39.3 DAS.

3. Revision to Biological Reference Points

This action revises 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, is consistent with National Standard 1. The B_{target} under this recommendation is 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.

Comments and Responses

The public comment period for the proposed rule ended on September 6, 2011. One comment was received.

Comment 1: The commenter suggested that all fishery quotas should be cut, based on the notion that coastal hypoxia was not considered when developing Framework 7.

Response: The commenter discussed coastal hypoxia at length, but did not explain how it relates to this rule and there is no known scientific basis for the commenter's suggestion. The reasons presented by the Council and NMFS for recommending the monkfish measures in this Framework are based on the best scientific information available, and are discussed in the preambles to both the proposed and final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a determination that this final rule is consistent with the Monkfish FMP, Framework 7, other provisions of the Magnuson-Stevens Act, and other applicable laws.

Pursuant to the APA, 5 U.S.C. 553(d)(1), NMFS finds good cause to waive the 30-day delay in effectiveness of this rule. This final rule implements measures that are less restrictive than current regulations by increasing monkfish DAS allocations and trip limits for permit category B and D vessels in the NFMA. The increase in the DAS allocations and trip limits being implemented by this action are measures that were intended to be implemented with Amendment 5 on May 1, 2011 (start of the 2011 FY). However, while Amendment 5 was being finalized, new scientific information became available which resulted in the disapproval of the measures in Amendment 5 that modify the NFMA DAS and trip limits. Therefore, this action was adopted to implement less restrictive DAS and trip limits that were disapproved in Amendment 5.

Moreover, the monkfish fishery is a seasonal fishery, with the majority of the fishing activity occurring in the spring and fall. Waiving the 30-day delay in effectiveness of this rule will allow vessels to immediately utilize the additional DAS and trip limits for a greater portion of the fall fishery than if the current and more restrictive regulations were in place for the 30-day delay in effectiveness period. Specifically, some vessels have already exhausted their DAS. Waiving the 30-day delayed effectiveness will provide more opportunities for these vessels to continue fishing in the fall fishery. A delay in effectiveness could result in unnecessary short-term adverse economic impacts to monkfish vessels and associated shoreside facilities and fishing communities. Lastly, in the recent past, the monkfish fishery has not been able to utilize its full ACT. It is expected that, with increased DAS allocation and trip limits being implemented with this action, the monkfish fishery will be able to more effectively utilize the ACT. Thus, a delay in effectiveness would be contrary to achieving optimum yield in the monkfish fishery, thereby undermining the purpose of this rulemaking.

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

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**).

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of Framework 7. The FRFA incorporates the IRFA, relevant analyses contained in the Framework and its EA, and a summary of the analyses completed to support the action in this rule. A copy of the analyses done in the Framework and EA is available from the Councils (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

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

No significant issues were raised by the public comment in response to the IRFA.

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 (less than \$4.0 million in annual gross sales). Although multiple vessels may be owned by a single owner, tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for purposes of this analysis, each permitted vessel is treated as a single small business entity. Consequently, there are no differential impacts between large and small entities. 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 action does not introduce any new reporting, recordkeeping, or other compliance requirements. This final rule does not duplicate, overlap, or conflict with other Federal rules.

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

The management measures 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 FY 2008, while only 504 open access permit holders (23 percent) actively participated in the fishery during that time period. Thus, this action is expected to impact at least 1,077 currently active monkfish permit holders, but have no impact on open access permit holders.

The majority of the measures in this action are specific to the NFMA, and, thus, will 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 will most likely impact approximately 232 vessels that fish in the NFMA.

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

All of the management measures contained in Framework 7 and implemented in this final rule either provide for increased fishing opportunities or increased efficiency and profitability. This action increases fishing opportunities by raising the overall annual DAS allocations for all limited access monkfish vessels from 31 DAS to 40 DAS, prior to adjusting the DAS allocation for the Monkfish RSA program. Although the DAS usage cap for the SFMA remains at 28 DAS, the NFMA DAS increase provides additional fishing opportunities for vessels that fish primarily in the NFMA, vessels that fish in both the NFMA and SFMA, and vessels that fish primarily in the SFMA that may also wish to pursue fishing opportunities in the NFMA. Previously, vessels that fished primarily in the SFMA who utilized the maximum 28 SFMA DAS would otherwise have 3 DAS remaining that could only be used in the NFMA. With this action, these vessels will now have 12 DAS available for use in the NFMA prior to adjusting the DAS allocation for the Monkfish RSA program, which may provide opportunities for these vessels to also participate in the NFMA fishery as well as the SFMA fishery.

In regards to increased efficiency and profitability, this action increases the NFMA ACT. Assuming that prices do not decrease due to higher landings, a higher ACT would result in higher monkfish revenues and thus additional benefits to vessels. However, this is only the case if the higher allocation is actually landed. To achieve the higher ACT, this action also raises the trip limits for permit Category B and D vessels from 470 lb (213 kg) to 600 lb (272 kg) tail weight. This increase allows Category B and D vessels fishing in the NFMA to land more monkfish than previously authorized, which could increase vessel efficiency and profitability, as well as reducing any regulatory discards.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with

the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the NMFS Northeast Regional Office, and the guide, *i.e.*, permit holder letter, will be sent to all holders of permits for the monkfish fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional Office's Web site at <http://www.nero.noaa.gov>.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 19, 2011.

Samuel D. Rauch III,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.92, 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.

* * * * *

■ 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 (gutted) 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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[FR Doc. 2011-27723 Filed 10-25-11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521-0640-02]

RIN 0648-XA791

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by pot catcher/processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2011 Pacific cod total allowable catch (TAC) specified for pot catcher/processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 23, 2011, through 1200 hrs, A.l.t., December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the