

From: **Gene Martin - NOAA Federal** <gene.s.martin@noaa.gov>
Date: Fri, Feb 1, 2013 at 10:42 AM
Subject: Category H monkfish fishery
To: cmoore@mafmc.org, Paul Howard <phoward@nefmc.org>, Tom Dempsey <tdempsey@ccchfa.org>
Cc: Tom Nies <TNies@nefmc.org>, Douglas Christel - NOAA Federal <douglas.christel@noaa.gov>, Michael Pentony - NOAA Federal <michael.pentony@noaa.gov>

I was asked to give my opinion on whether changes in the Northern line delimiting where Category H monkfish fishers fish can be done through a framework versus an amendment. My understanding is that a change in this line was made in FW 4 to the monkfish FMP and based on that precedent it would be appropriate to adjust or modify the location of the line through the framework process.

I also understand that the council may be considering eliminating the line and the category H fishing permit and allowing Category H permits to be recategorized as Category A/B vessels. Eliminating a fundamental measure such as what type of restrictions apply to a limited access vessel as opposed to merely modifying such a measure, would most likely require an amendment. The creation of the Category H permit was based on a fundamental allocation and limited access qualification measure provision in Amendment 2., Measures that define who qualifies for limited access fisheries and any limitations assigned to them are fundamental building blocks of an FMP and, based on at least one court decision, should not be eliminated except through the same process that created such measures which in this case is an amendment. Moreover, the monkfish FMP does not specifically list this type of change as a frameworkable measure. As you know, using an amendment process does not necessarily mean that any additional analysis is needed nor does it mean that the process will take longer than the framework process as long as the amendment is narrowly centered on a single issue.

Let me know if this answers you questions.

--

Gene S. Martin, Jr.
Section Chief
NOAA General Counsel- Northeast Section
55 Great Republic Drive
Gloucester, MA 01930
978 281-9242
978 281 9389 (fax)