

## 8.0 GLOSSARY

**Amendment** - a formal change to a fishery management plan (see FMP). The Council prepares amendments and submits them to the Secretary of Commerce for review and approval. The Council also may change FMPs through a "framework adjustment procedure" (see below).

**B<sub>MSY</sub>** - The stock biomass that would produce MSY when fished at a level equal to  $F_{MSY}$ . For most stocks,  $B_{MSY}$  is about ½ of the carrying capacity.

**Days absent** - an estimate by port agents of trip length. This data was collected as part of the NMFS weighout system prior to May 1, 1994.

**Days-at-sea (DAS)** - the total days, including steaming time that a boat spends at sea to fish.

**Environmental Impact Statement (EIS)** - an analysis of the expected impacts of a fisheries management plan (or some other proposed action) on the environment and on people, initially prepared as a "Draft" (DSEIS) for public comment. After an initial EIS is prepared for a plan, subsequent analyses are called "Supplemental".

**Exempt fisheries** - Any fishery determined by the Regional Director to have less than 5 percent regulated species as a bycatch, by weight, of total catch according to 50 CFR 648.80(a)(7).

**Exploitation rate** - the percentage of catchable fish killed by fishing every year. If a fish stock has 1,000,000 fish large enough to be caught by fishing gear and 550,000 are killed by fishing during the year, the annual exploitation rate is 55%.

**Fishing effort** - the amount of time and fishing power used to harvest fish. Fishing power includes gear size, boat size and horsepower.

**Fishing mortality (F)** - (see *Mortality*)

**FMP** - Fishery management plan. Formal documents describing a fishery and the rules that govern it. These documents form the basis for federal regulations for fisheries under management authority of the regional management councils. These councils are authorized to manage fisheries and are required to prepare fishery management plans by the Magnuson Fishery Conservation and Management Act. The New England Fishery Management Council prepares FMPs and submits them to the Secretary of Commerce for approval and implementation.

**Framework adjustments** - adjustments within a range of measures previously specified in a fishery management plan (FMP). A change usually can be made more quickly and easily by a framework adjustment than through an amendment. For plans developed by the New England Council, the procedure requires at least two Council meetings including at least one public hearing and an evaluation of environmental impacts not already analyzed as part of the FMP.

**Limited-access permits** - permits issued to vessels that met certain qualification criteria by a specified date (the "control date").

**Mortality:**

**Fishing mortality (F)** - (also see *exploitation rate*) a measurement of the rate of removal of fish from a population by fishing. Fishing mortality (F) is the rate at which fish are harvested at any given point in time. ("Exploitation rate" is an annual rate of removal, "F" is an instantaneous rate).

**F<sub>0.1</sub>** - a conservative target fishing mortality rate used to determine allowable fishing levels.

**F<sub>MSY</sub>** – a fishing mortality rate that would produce MSY when the stock biomass is at a level capable of producing MSY on a continuing basis.

**Natural mortality** - a measurement of the rate of fish deaths from all causes other than fishing such as predation, disease, starvation and pollution. The rate of natural mortality may vary from species to species.

**Minimum spawning stock threshold** - the minimum spawning stock size (or biomass) below which there is a significantly lower chance that the stock will produce enough new fish to sustain itself over the long term.

**Multispecies** - the group of species managed under the Northeast Multispecies Fishery Management Plan. This group includes whiting, red hake and ocean pout plus the regulated species (cod, haddock, pollock, yellowtail flounder, winter flounder, witch flounder, American plaice, windowpane flounder, white hake and redfish).

**NFMA** - Northern fishery management area, including the federally managed waters of the Gulf of Maine and the northern portions of Georges Bank. This area is delineated by the shaded portion of Figure 1.

**Open access** - describes a fishery or permit for which there is no qualification criteria to participate. Open-access permits may be issued with restrictions on fishing (for example, the type of gear that may be used or the amount of fish that may be caught).

**Overfished** - A measure of stock biomass that is below a threshold level that would provide adequate spawning activity, ie. the stock's productive capacity.

**Overfishing** - A level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis.

**Possession-limit-only permit** - an open-access permit (see above) that restricts the amount of multispecies a vessel may retain (currently 500 pounds of "regulated species").

**Proposed rule** - a federal regulation is usually published in the *Federal Register* as a proposed rule with a time period for public comment. After the comment period closes, the proposed regulation may be changed or withdrawn before it is published as a final rule, along with its date of implementation and response to comments.

**Recruitment** - the amount of fish added to the fishery each year due to growth and/or migration into the fishing area. For example, the number of fish that grow to become vulnerable to fishing gear in one year would be the recruitment to the fishery.

**Regulated groundfish species** - cod, haddock, pollock, yellowtail flounder, winter flounder, witch flounder, American plaice, windowpane flounder, white hake and redfish. (These species are usually caught with large-mesh net gear.)

**Secretarial review process** - a process which normally takes 140 days from the time the Council submits a plan or amendment to the Secretary of Commerce until its implementation. The Secretary of Commerce reviews and possibly approves the plan or amendment which must meet the National Standards established by the Magnuson Fishery Management and Conservation Act as well as other federal requirements (the National Environmental Policy Act, the Marine Mammal Protection Act, the Endangered Species Act and other applicable law).

**SFMA** - Southern fishery management area, including the federally managed waters of Southern New England, the Mid-Atlantic, and the southern portion of Georges Bank.

**Species of concern** - A regulated multispecies that has a target level of catch or landings to judge the effectiveness of the management measures to control fishing mortality on that species.

**Spawning stock biomass (SSB)** - the total weight of fish in a stock that are old enough to reproduce.

**Stock** - a grouping of fish usually based on genetic relationship, geographic distribution and movement patterns. A region may have more than one stock of a species (for example, Gulf of Maine cod and Georges Bank cod).

**TAL** - Total allowable landings, also known as nominal total allowable catch (TAC). This value is the measure of removals from a population caused by fishing, minus the amount of fish removed by discard mortality.

**VTS** - an electronic vessel tracking system, often used to record the time a vessel is at sea on a fishing trip or to enforce closed areas.

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# DRAFT REGULATORY LANGUAGE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

Fisheries of the Northeastern United States; Monkfish Fishery Management Plan

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

ACTION: Proposed rule; proposed collection of information; request for comments.

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SUMMARY: NMFS proposes regulations to implement the Monkfish Fishery Management Plan (FMP). The intended effect of this rule is to stop overfishing and rebuild monkfish stock in the Northwest Atlantic.

DATES: Comments are invited on the proposed Plan and its supporting documents, including the regulatory impact review (RIR) and the initial regulatory flexibility analysis (IRFA) contained within the RIR, and the proposed rule through [insert the date 45 days following the date of publication].

Comments are also invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

ADDRESSES: Comments should be sent to Mr. Jon Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ``Comments on Monkfish Plan.''

Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

Copies of the proposed Monkfish FMP, its RIR and the IRFA contained within the RIR, and the Final Supplemental Environmental Impact Statement (FSEIS) are available from Paul Howard, Executive Director, New England Fishery Management Council, 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:

This Plan would implement Alternative 3 of the Council's Monkfish FMP public hearing document as refined and modified by the Council for adoption as its preferred alternative. The preferred alternative is intended to meet the Plan objectives, stop overfishing, and rebuild biomass to a level capable of producing MSY.

The purpose of the proposed action is to initiate management of monkfish (*Lophius americanus*) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MFMCA) of 1976 as amended. On September 30, 1997, NMFS determined that the monkfish fishery was overfished on the basis of inadequate stock level. This determination and notification gave the Councils one year to develop and submit an FMP, which would stop overfishing and rebuild the stock.

Recent U.S. landings of monkfish have increased dramatically in response to an increase in the market value of the species in combination with the decline in abundance of traditional target species. Most monkfish are taken as bycatch in the Northwest Atlantic groundfish and scallop fisheries, although directed effort is increasing. Directed fishing effort is occurring in both deepwater (100-150 fathoms) by otter trawls and in shoal waters by gillnets and scallop dredges.

When the Councils were first considering potential management steps for monkfish, landings of monkfish tails had increased markedly since the mid-1980s when they averaged 2.5 mt (5.5 million pounds). In 1992, the landings of tails increased to a record high 4.6 mt (10.3 million pounds). These high levels occurred because of increasing directed fishing effort and increasing fishing effort for groundfish and scallops which occurred throughout the 1980's. Most landings (80%) in 1992 came from bycatch in the groundfish and scallop fisheries. During the early phases of developing a management plan, increases in monkfish fishing effort pushed the directed catch to nearly 30% of total monkfish landings. Directed fishing with gillnets had also become more prevalent. Interest in fishing for monkfish was fueled by the valuable liver market (709,000 pounds at \$3.66 in 1992) and increasing market acceptance of small monkfish tails.

The 1997 landings reached an all-time high at 57.5 million pounds, whole weight (or 17.3 million pounds tail-weight). The average tail weight in the landings had declined to 0.9 pounds during 1995-1996. Sea sampling observations, weighted by gear and area, indicate that about 54 percent of the monkfish stock was landed during 1995-1996, or about 16 percent by weight. If the earlier rate of discarding continued in 1997, then about 35 million fish were caught during 1997. The most recent stock assessment (NEFSC 1997), estimated that fishing mortality for monkfish was 0.15 in the Northern Fishery Management Area and 0.51 in the Southern Fishery Management Area, well over the overfishing levels of 0.05 and 0.14, respectively.

During 1991, the Mid-Atlantic and New England Councils both requested approval from the Regional Administrator to develop a management plan for monkfish. The Regional Administrator suggested that the Councils convene a joint committee to evaluate prospects for managing this fishery. That committee found that there were sufficient reasons for concern and that the Councils should jointly develop a management plan for monkfish. Those reasons included the recent declines in survey indices, the declining size of tails being landed, 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.

Fishermen and fish dealers related their concerns about the monkfish fishery to both the New England and Mid-Atlantic Fishery Management Councils during 1991 and early 1992. They cited the increasing amount of "small" and "peewee" category tails being landed, the more frequent gear conflicts between monkfish boats and other fishermen, and the expanding directed trawl fishery as problems.

Many fishermen urged the Councils to quickly develop and implement simple management regulations to protect the resource. A minimum size limit was overwhelmingly supported during the initial scoping hearings. After discussing the options, the Councils decided that the states could implement landing regulations much quicker than the Councils could develop a fishery management plan and have an FMP approved by the Secretary of Commerce.

Because of the lengthy FMP process and the reluctance of NMFS to promulgate emergency regulations for species which do not have governing FMPs, the Councils requested coastal states from North Carolina through Maine to implement landings and/or possession limits for monkfish that will dovetail with the management measures under development. This effort was seen as the most expedient way to improve conservation of monkfish while the more lengthy FMP development process was underway. To date, NJ, NY, CT, RI, MA, and NH have implemented an 11-inch minimum tail length (17-inch minimum whole fish length), and a 25 percent liver to tail landings ratio per trip restriction.

The Councils adopted four management goals for monkfish to compliment those required under 50 CFR § 602.11, which address overfishing: 1)To end and prevent overfishing; rebuilding and maintaining 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. These four goals would ensure adequate spawning and highest possible yields without radically altering the fisheries that target other species or causing extensive regulatory discarding. In addition, they address immediate problems caused by intensified fishing effort for small monkfish. The Councils intention is to address these goals through implementation of initial management measures to limit mortality and improve size selectivity, where technically feasible.

The Councils developed four alternatives that could meet the plan objectives and stop overfishing. Alternative 3 was preferred and would achieve mortality reduction through a permit moratorium, limits on days-at-sea allocations, and trip limits to accommodate bycatch on vessels that would fail to qualify for a limited access monkfish permit. During public hearings, the public raised 22 primary issues and NMFS identified additional ones, including the specified rebuilding schedule, equity concerns about alternative 3, and the complexity of the preferred alternative. These issues are explained in detail within the Monkfish FMP.

The Councils modified preferred alternative 3 to address the concerns raised at public hearings. A second round of public hearings was necessary because the new preferred alternative was more restrictive than any alternative contemplated during the first public hearings in January 1997. The major changes in the plan were to limit the amount of multispecies and scallop days that vessels qualifying for monkfish limited access could use to target monkfish. In the revised preferred alternative, all vessels that qualify would be able to use no more than 40 days-at-sea annually to exceed the bycatch allowances and target monkfish. The Councils also advanced the mortality reduction schedule to four years, rather than seven, to allow sufficient time to rebuild the monkfish resource in the mandated 10-year

period. Changes to the bycatch allowances and the gillnet limits were also included.

The major issues identified by the public at these subsequent hearings were: 1) Equity between qualifiers and non-qualifiers and between residents of various states, 2) Discards caused by the proposed trip limits, 3) Discards caused by the proposed size limits, and 4) Ability to comply with complicated regulations and enforcement costs.

The Councils further refined the preferred alternative by modifying the proposed trip limits, advancing the timing of trip limits for limited access monkfish vessels when they are on a monkfish day-at-sea, and reducing the complexity of secondary management measures.

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 Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA), respectively. Without accounting for improved size selectivity, the total allowable landings would need to be reduced to 4,047 mt and 3,252 mt, respectively, to stop overfishing. The proposed management alternatives have complementary measures that will potentially improve size selectivity, but the magnitude of these improvements is difficult to quantify and depend on changes in fishing behavior. The Councils, therefore, propose a longer-term reduction in total allowable landings and to make adjustments to the TACs as future conditions change.

During the first fishing year beginning May 1, 1999, the Councils propose TACs of 5,673 mt and 6,024 mt in the NFMA and the SFMA, respectively. The catch in the directed and bycatch fisheries has been estimated to be 7,968 and 9,097 mt in the NFMA and SFMA, respectively, exceeding these TAC specifications. The TAC would remain constant through year four. In the fourth year, the TACs would decline to 4,047 mt and 3,252 mt for the NFMA and the SFMA, respectively. The quantitative estimate from limited access, days-at-sea allocations, and trip limits in year four indicate that catches could be as high as 5,381 and 4,760 mt in the NFMA and SFMA, respectively. Subsequent mortality and TAC reductions may be necessary in years 5 through 9 to achieve the rebuilding biomass targets in year 10.

The estimated effects of the preferred alternative, however, only take into account the impacts of limited access, days-at-sea allocations, and trip limits. Other factors that could not be analyzed (e.g. changes in fishing strategies caused by requiring multispecies and scallop vessels to take their monkfish days-at-sea simultaneous to the multispecies and scallop days-at-sea) and other measures that could be estimated independently (e.g. size limits and area closures) account for the quantitative difference. The biological, economic, and social impacts of these measures and the cumulative impacts associated with other plans and regulations are discussed in the FEIS.

The Monkfish FMP will create a permit moratorium on new entrants to the fishery after the control date, February 27, 1995. It will require vessels to have a limited access permit and fish during a monkfish day-at-sea when targeting monkfish and exceeding the monkfish bycatch allowances that are defined for other fisheries. The FMP will also establish an annual review and framework adjustment process that will ensure that the Plan meets the mortality reduction and rebuilding targets. The proposed management measures are necessary to stop overfishing, rebuild stock biomass to conditions that will produce MSY, and achieve optimum yield.

Proposed action

The proposed action is the Councils' preferred alternative and includes the following primary measures: a) Target allowable catches to act as interim guidance on plan effectiveness in meeting mortality targets; b) Qualification criteria for limited access; c) Allocations of days-at-sea to vessels that qualify for limited access; d) Trip limits for vessels on a monkfish day-at-sea; e) Bycatch allowances for vessels not on a monkfish day-at-sea; f) Minimum size limits; g) Gillnet limits; h) Mandatory time out of the fishery during the spawning season; and i) A framework adjustment process. Secondary management measures included in the proposed action are: j) Two management areas for setting biological reference points and implementing differing management measures; k) Restrictions on liver landings to prevent high-grading; l) A "running clock" procedure to administer trip limits without forcing vessels to discard excess monkfish; m) Minimum mesh restrictions to reduce bycatch of groundfish and other species; n) Permitting and reporting requirements (for dealers and limited access vessels), and o) Other measures to ease administration and enforcement.

The following summarizes the proposed measures. Detailed rationale for each measure is provided in the FMP.

#### Total Allowable Catch

The Amendment would establish a procedure for setting annual target TAC levels for monkfish. This procedure would be used annually to set TACs, with the exception of TACs for the fishing year beginning May 1, 1999, which would be set by this rule. The TACs would be set 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 determinations on the need for adjustments to this program on an annual basis. The TAC levels would be set so as to attain a fishing mortality rate of 0.07 in the Northern Fishery Management Area (NFMA) and 0.26 in the Southern Fishery Management Area (SFMA) for the 2000 and 2001 fishing years. Beginning with the 2002 fishing year, the TACs will be set so as to stop overfishing in 2002 and in fishing years beginning 2003 will allow rebuilding to the stock biomass targets by 2009.

#### Specification of the 1999 TAC and future adjustments

For the fishing year beginning May 1, 1999 to April 30, 2000, the TAC levels that would correspond to the fishing mortality rate objectives are 5,673 mt in the NFMA and 6,024 mt in the SFMA. Current estimates are for the TACs to remain constant until the 2002 fishing year, when they would decline to 4,047 mt and 3,252 mt, respectively.

Specifications of TACs and adjustments for 2000 and beyond would be accomplished throughout the annual review framework process discussed below.

#### Qualification criteria for limited access

The beginning of the qualification period is February 28, 1991, four years prior to the control date. A four-year qualification period was chosen because it encompassed the development of the directed monkfish fishery and included a sufficiently broad time period so that it was unlikely that a vessel could not qualify due to equipment malfunction, extended maintenance, or illness. The qualification criteria were furthermore chosen such that any vessel that targeted monkfish on even a seasonal basis would be likely to qualify for limited access.

Vessels will qualify for monkfish limited access based on the vessel's (or a replaced vessel's) historic participation from February 28, 1991 to

February 27, 1995 (the monkfish control date). Vessels could automatically qualify based on official (NMFS or state) weighout or dealer reports. Other vessels will be allowed to substantiate other data to qualify during a verification period.

All vessels will qualify, subject to the restrictions defined in the proposed rule, for a limited access monkfish permit if the vessel landed more than 50,000 pounds tail-weight (166,000 pounds whole-weight) during the qualification period. Vessels that do not have multispecies or scallop limited access permits and qualifies according to this criterion will receive a "Category A" monkfish limited access permit. Vessels that have a multispecies or scallop limited access permit and qualifies according to this criterion will receive a "Category C" monkfish limited access permit.

Vessels that are less than 51 gross registered tons (GRT) and all vessels with a multispecies day-at-sea permit will qualify, subject to the restrictions defined in the proposed rule, for a limited access monkfish permit if the vessel landed more than 7,500 pounds tail-weight (24,900 pounds whole-weight) during the qualification period. Vessels that do not have a multispecies or scallop limited access permit and qualifies according to this criterion will receive a "Category B" monkfish limited access permit. Vessels that have multispecies or scallop limited access permits and qualifies according to this criterion will receive a "Category D" monkfish limited access permit.

#### Allocations of day-at-sea

Forty (40) days-at-sea will be allocated to vessels with a category A, B, C, and D permit on May 1, 1999 (the beginning of year 1). Forty (40) days-at-sea will also be allocated to monkfish limited access permit holders (categories A-D) at the beginning of years 2 and 3. No (0) days-at-sea will be allocated in year 4 and subsequent years of the FMP, unless the mortality goals can be met with an allocation of days to limited access vessels. The Councils may adjust other measures in the FMP to achieve equivalent fishing mortality reductions and adjust the days-at-sea allocations via the framework process. The anticipated days-at-sea allocations are shown in the table below.

Fishing year	Annual days-at-sea allocation:
May 1, 1999 to April 30, 2000	40
May 1, 2000 to April 30, 2001	40
May 1, 2001 to April 30, 2002	40
May 1, 2002 to April 30, 2003 and subsequent fishing years	0

Any vessel may carryover a maximum of 10 unused monkfish days-at-sea to the following fishing year's allocation (including beyond May 1, 2002). NMFS will automatically credit each vessel with the amount of days-at-sea remaining in the prior year's account up to a maximum of 10 days-at-sea. Monkfish days-at-sea may not be carried over beyond the year following the one in which they were unused. A vessel owner will not have to apply to have the days-at-sea carried forward.

Multispecies and scallop vessels that qualify for monkfish limited access (Categories C and D) will receive the same number monkfish day-at-sea as allocated to other permit categories. When the vessel targets monkfish and reports a trip under the monkfish day-at-sea program, the trip will also count against a multispecies or scallop day-at-sea, whichever is applicable. A combination vessel that holds both types of permits may target monkfish

during either a multispecies or scallop day-at-sea, provided that unused days are available. The combination vessel must fish according to the rules that would apply to a vessel on either a multispecies or scallop day-at-sea.

#### Trip limits during a monkfish day-at-sea

No trip limits will apply to vessels fishing during a monkfish day-at-sea prior to May 1, 2000. The following trip limits will apply beginning May 1, 2000, depending on the type of monkfish permit the vessel holds and the type of gear the vessel uses: a) Category A and C vessels using mobile gear during a monkfish day-at-sea will have a 1,500 pounds tail-weight (4,980 pound whole-weight) per day-at-sea landing limit; b) Category B and D vessels using mobile gear during a monkfish day-at-sea will have a 1,000 pound tail-weight (3,320 pound whole-weight) per day-at-sea landing limit; c) Any vessel using fixed gear during a monkfish day-at-sea will have a 300 pound tail-weight (996 pound whole-weight) per day-at-sea landing limit.

#### Bycatch allowances for vessels not on a monkfish day-at-sea

Monkfish possession limits will depend on the type of fishery a vessel participates in (by calling into a day-at-sea) and the type of gear a vessel uses. There are four provisions for monkfish bycatch for vessels that are not on a monkfish day-at-sea: a) a vessel on a multispecies day-at-sea, b) a vessel on a scallop day-at-sea, c) a vessel not on a day-at-sea and using gear with large mesh, and d) a vessel not on a day-at-sea and using gear with small mesh. The proposed bycatch allowances while on a day-at-sea will be a landings limit, while all other bycatch allowances will be a possession limit.

Prior to May 1, 2002, vessels with a multispecies and a Category C or D limited access monkfish permit, while not called into a monkfish day-at-sea, will have the following monkfish bycatch allowance. A multispecies vessel that fishes only in the Northern Fishery Management Area (NFMA) will have no trip limit when it is on a multispecies day-at-sea. If the vessel fishes for any portion of the trip during a multispecies day-at-sea (but not during a monkfish day-at-sea) in the Southern Fishery Management Area (SFMA), the vessel will be able to land up to 300 pounds tail-weight (996 pounds whole-weight) of monkfish per day-at-sea while using mobile gear or 50 pounds tail-weight (166 pounds whole-weight) of monkfish per day-at-sea while using fixed gear.

After April 30, 2002, vessels with a multispecies and a Category C or D limited access monkfish permit while not called into a monkfish day-at-sea will have the following monkfish bycatch allowance. Multispecies vessels will be able to land up to 300 pounds tail-weight (996 pounds whole-weight) of monkfish per day-at-sea, or 25 percent of total weight of fish onboard, whichever is less. Trip limits for vessels using fixed gear in the SFMA will remain at 50 pounds tail-weight (166 pounds whole-weight) of monkfish per day-at-sea.

Beginning May 1, 1999, multispecies vessels with a monkfish bycatch permit will have the following monkfish bycatch allowance when on a multispecies day-at-sea. Multispecies vessels that are fishing in the NFMA will be able to land up to 300 pounds tail-weight (996 pounds whole-weight) of monkfish per day-at-sea, or 25 percent of total weight of fish onboard, whichever is less. If the vessel fishes for any portion of the trip in the SFMA, the vessel will be able to land up to 50 pounds tail-weight (166 pounds whole-weight) of monkfish per day-at-sea.

Prior to May 1, 2002, vessels with a sea scallop and a Category C or D limited access monkfish permit while not called into a monkfish day-at-sea

will have the following monkfish bycatch allowance. Vessels that have a scallop dredge aboard or are on a scallop, but not a monkfish day-at-sea will be able to land up to 300 pounds tail-weight (996 pounds whole-weight) of monkfish per day-at-sea.

After April 30, 2002, vessels with a sea scallop and a Category C or D limited access monkfish permit while not called into a monkfish day-at-sea will have the following monkfish bycatch allowance. Vessels that have a scallop dredge aboard or are on a scallop, but not a monkfish day-at-sea will be able to land up to 200 pounds tail-weight (664 pounds whole-weight) of monkfish per day-at-sea.

Prior to May 1, 2002, sea scallop vessels with a monkfish bycatch permit will be able to land up to 300 pounds tail-weight (996 pounds whole-weight) of monkfish per day-at-sea when on a scallop day-at-sea.

After April 30, 2002, sea scallop vessels with a monkfish bycatch permit will be able to land up to 200 pounds tail-weight (664 pounds whole-weight) of monkfish per day-at-sea.

Vessels using large mesh (5½-inch (14.0-cm) diamond or 6-inch (15.25 cm) square mesh throughout the body, extension, and codend) while not on a monkfish, multispecies, or scallop day-at-sea may retain and land monkfish (whole or tails) up to 5 percent of the total weight of fish onboard.

Vessels that are not on a day-at-sea and fishing with small mesh, rod and reel, or handlines may land up to 50 pounds tail-weight (166 pounds whole-weight) per trip. Small mesh is considered to be any mesh smaller than the large mesh provisions described above. Multispecies vessels that are less than 20 feet and elect not to fish under the multispecies days-at-sea program may also land up to 50 pounds tail-weight (166 pounds whole-weight) of monkfish per trip.

#### Minimum size limits

Beginning on the date of plan implementation, possession or landing of monkfish tails measuring less than 11 inches in length or whole monkfish less than 17 inches total length by any vessel that has a federal fisheries permit or any vessel fishing in the EEZ would be prohibited. Fishermen that process monkfish at sea should use 17 inches total length as a guideline before processing. In nearly all cases, monkfish that are over 17 inches total length will have an 11-inch tail after being cut according to standard practices identified in the proposed rule.

After April 30, 2000 in the NFMA, the minimum size possession limits will remain as described in the above paragraph. For all vessels fishing in the SFMA, possession or landing of monkfish tails measuring less than 14 inches in length or whole monkfish less than 21 inches total length would be prohibited. Fishermen that process monkfish at sea should use 21 inches total length as a guideline before processing. In nearly all cases, monkfish that are over 21 inches total length will have a 14-inch tail after being cut according to standard practices.

#### Gillnet limits

A vessel that has a limited access monkfish permit may place no more than 160 net tags on any combination of monkfish and groundfish gillnets. Vessels without multispecies permits will of course be prohibited from using monkfish net tags on groundfish nets. Vessels may not fish with, haul, possess, or deploy more than 160 monkfish gillnets. Multispecies vessels may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 160 nets, provided that the number of monkfish, roundfish, and flatfish gillnets does not exceed the limitations and the nets are tagged in accordance with

the regulations in 50 CFR, §648.82. Nets may not be longer than 300-ft (91.44 m), or 50-fathoms, in length. All monkfish gillnets fished, hauled, possessed, or deployed must have one 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 50 CFR, §648.4. The vessel operator must produce all net tags upon request by an authorized officer.

#### Time out of the fishery

Vessels with a Category A or B permits (i.e. "monkfish-only") will be required to declare out of the monkfish fishery and cannot use a monkfish day-at-sea for a continuous 20-day block during the months of April, May, and June. The vessels may engage in other fisheries that they can legally participate in, but they may possess no 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 days-at-sea used to target monkfish. Multispecies days-at-sea vessels that have declared out of the multispecies fishery, for any reason including the fulfillment of its 20 day out periods, will be prohibited from possessing monkfish. Vessels that target species other than groundfish and monkfish will, however, be able to participate in exempted fisheries during the mandatory groundfish tie-up periods. Multispecies vessels with a category C or D would not be required to comply with the time out requirements for monkfish-only vessels described above.

#### Framework adjustment process

Many management measures in the Monkfish FMP would be adjustable via framework action. The effectiveness of the management program depends on uncertain factors that may change over time. Achieving the FMP's mortality objectives will 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 allows changes to be made in regulations in a timely manner without going through the plan amendment process. The purpose is to provide a formal opportunity for public comment that substitutes for the customary public comment period provided when publishing a proposed rule. If changes to the management measures were contemplated in the FMP, there was sufficient opportunity for public comment on the framework action, and the changes are not highly controversial, the Secretary of Commerce may waive the need for additional public comment through publication of a proposed rule in the Federal Register.

The framework adjustment process includes annual reviews by a Monkfish Monitoring Committee (MMC), who will evaluate the effectiveness of the FMP to meet the fishing mortality and rebuilding targets. The MMC will develop management options for consideration and approval by the Councils and the Councils must 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 may select measures recommended by the MMC that had not been rejected by both Councils if the Councils fail to submit a recommendation. Adjustable management measures include: a) Target TACs, b) Overfishing definition reference points, c) Closed seasons or closed areas, d) Minimum size limits, e) ratio of monkfish landings to total landings, f) Annual monkfish days-at-sea allocations and monitoring, g) Trip or possession limits, h) Blocks of time out of the fishery, i) Gear restrictions, j)

Transferability of permits and permit rights, and k) other frameworkable measures in 50 CFR § 648.90 and 50 CFR § 648.55.

#### Other measures

Other management measures are needed for administration, enforcement, monitoring, and augmenting the primary management measures described above. 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 more detail in the FMP. Although tagging and DNA component analysis would provide definitive information of 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 effectiveness to meet separate mortality reduction targets.

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 needed to prevent high-grading of the more valuable livers while vessels comply with the monkfish trip and size limits. The "running clock" provision would allow vessels called into the monkfish day-at-sea program to avoid discarding fish if their trip is 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 day-at-sea clock run to account for the overage. This measure would begin on May 1, 2000 when the directed fishery trip limits are implemented.

Vessels that fish while they are called into the monkfish day-at-sea program would be required to use large mesh, unless the vessel is also fishing during a multispecies day-at-sea. Large mesh is 10-inches square or 12-inches diamond for trawls and 12-inches diamond for gillnets. This mesh requirement is needed to reduce the bycatch of groundfish and other species while a vessel is on a monkfish day-at-sea. 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 day-at-sea. Most monkfish caught with a scallop dredge are less than the proposed minimum size limit for monkfish.

Vessels that catch monkfish will need to have either a limited access monkfish permit (category A, B, C, or D) or a monkfish bycatch permit to land monkfish. They will be required to submit Vessel Trip Reports. Vessels with a limited access monkfish permit will also need to call-in and out of the monkfish day-at-sea program when they are participating in the monkfish fishery. Dealers that land monkfish will need to apply for a Dealers Permit and submit landings reports.

#### Classification

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

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish implementing regulations proposed by a Council within 15 days of the receipt of an amendment and proposed regulations. At this time, NMFS has not determined whether the FMP that these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views and comments received during the comment period.

The Councils prepared a FEIS for the Monkfish FMP describing the possible impacts on the environment as a result of this rule. This Plan is

expected to have a significant impact on the human environment. A copy of the FEIS may be obtained from the New England Fishery Management Council (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 Plan 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 also due to 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 groundfish recovers. The majority of the vessels in the Monkfish Fishery are considered small entities. The proposed action will reduce the overall revenues of the monkfish fishery by approximately 50 to 54 percent in the first three 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 will reduce overall revenues by 69 percent compared to the status quo.

The impact of the proposed action will not be uniform for all vessels or all sectors. Instead, the action will have different effects on different gear groups, with vessels using gillnets and vessels fishing in the Mid-Atlantic being relatively more disadvantaged 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 bycatch. Fishery sectors that rely more heavily on monkfish will 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 will be positive beginning in the year 2009, which will create demand for other goods and services in the area and lead to increased production and employment. The overall impacts will 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.

The proposed action is economically significant for the purposes of E.O. 12866, but probably will not have an annual impact on the economy of \$100 million or more, and will not adversely affect the productivity, environment, public health or safety or state, local or tribal governments or communities in the long term. By increasing monkfish catch rates in the long term and reducing operating costs, the proposed action is expected to make the industry more productive after recovery of monkfish and to increase the competitiveness of the domestic industry in world markets.

This proposed rule contains 14 new collection-of-information requirements subject to the Paperwork Reduction Act and have been submitted to OMB for approval. The affected public is classified as "Business or other for-profit - Northeast region fisheries". 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. Send comments regarding this reporting burden estimate 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, OMB# , including four new permit categories (665 respondents, 30 minutes/response, 332 annual burden hours, \$4,987 annual cost to the public). In subsequent years, only category A and B permitted vessels will have additional costs (130 respondents, 15 minutes/response, 32 annual burden hours, \$487 annual cost to the public), since other vessels already have Northeast region permits.

Monkfish bycatch permits, OMB# (1412 respondents, 30 minutes/respondent, 706 annual burden hours, \$10,590 annual cost to the public).

Permit appeals, OMB# (65 respondents, 3 hours/respondent, 195 annual burden hours, \$2,925 annual cost to the public).

Replacement, upgrade and retention of vessel history, OMB# (68 respondents, 105 minutes/respondent, 119 annual burden hours, \$1,785 annual cost to the public).

Operator permit, OMB# (130 respondents, 1 hour/respondent, 130 annual burden hours, \$1,950 annual cost to the public).

Dealers permit and reports, OMB# (100 respondents, 82 minutes/respondent, 137 annual burden hours, \$2,059 annual cost to the public).

Gillnet designations - declaration into the day-boat fishing category, OMB# (85 respondents, 10 minutes/respondent, 14 annual burden hours, \$217 annual cost to the public).

Call-in, call-out (Day-at-sea reporting), OMB# (665 respondents, 9 minutes/respondent, 100 annual burden hours, \$1,503 annual cost to the public).

Area declaration for identifying compliance with the differential size limit beginning May 1, 2000, OMB# (302 respondents, 12 minutes/respondent, 60 annual burden hours, \$906 annual cost to the public).

Notification of transiting, OMB# (302 respondents, 12 minutes/respondent, 60 annual burden hours, \$911 annual cost to the public).

Vessel trip reports, OMB# (130 respondents, 12 minutes/respondent, 26 annual burden hours, \$392 annual cost to the public).

Hail weight reports, OMB# (150 respondents, 7 minutes/respondent, 17 annual burden hours, \$262 annual cost to the public).

Net tagging requirements, OMB# (85 respondents, 165 minutes/respondent, 248 annual burden hours, \$3,720 annual cost to the public).

Good Samaritan credits, OMB# (10 respondents, 30 minutes/respondent, 5 annual burden hours, \$75 annual cost to the public).

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.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: [insert date of publication].

Gary Matlock, Program Management Officer, 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 ?Vessel Tracking System? is removed, the definition for ?Day(s)-at-Sea (DAS)?, ?Fishing year?, ?Monkfish?, ?Out of the multispecies fishery?, ?Prior to leaving port?, ?Sink gillnet or bottom-tending gillnet?, ?Tied up to the dock? and ?Upon returning to port? are revised, and the definitions for ?Councils?, ?Large mesh?, ?Monkfish gillnets?, ?Monkfish Monitoring Committee?, ?Out of the monkfish fishery? and ?Vessel Monitoring System? 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 periods of time during which a fishing vessel is absent from port in which the vessel intends 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.

\* \* \* \* \*

Large mesh, with respect to the monkfish fishery, means mesh no smaller than 10-inches square or 12-inches diamond throughout the codend for at least 45 continuous meshes for trawl vessels fishing under monkfish DAS; except for trawl vessels with a Category C or D limited access monkfish permit fishing under both a monkfish and multispecies DAS, which mesh must then conform to the regulations for the NE Multispecies FMP. For vessels fishing with gillnets under a monkfish DAS, large mesh means mesh no smaller than 10-inches diamond.

\* \* \* \* \*

Monkfish, also known as anglerfish or goosefish, means Lophius americanus.

Monkfish gillnets means gillnet gear with mesh size as specified at ? 648.91(c)(2)(iii) 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 and 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 means to tie-up at a dock, on a mooring, or in a harbor.

\* \* \* \* \*

Upon returning to port, for purposes of the call-in notification system for the NE multispecies and monkfish fisheries, means the first point when a vessel ties up at a dock or mooring in a port at the end of a fishing trip

\* \* \* \* \*

Vessel Monitoring System (VMS) means a vessel monitoring system 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. Section 648.4 is amended by adding paragraph (a)(9) to read as follows:

? 648.4 Vessel and individual commercial permits.

(a) \* \* \*

(9) Monkfish vessels. Any vessel of the United States that fishes for, possesses or lands monkfish in or from the EEZ must have been issued and carry on board a valid monkfish permit.

(i) Limited access monkfish permits (effective May 1, 1999). (A) Eligibility. A vessel is eligible to qualify for a limited access monkfish permit to fish for and retain monkfish above the trip limits specified in ?? 648.94(b) and (c) and 648.95, 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 more than 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). The vessel must have landed more than 7,500 lb (3402 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 more than 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). The vessel must have landed more than 7,500 lb (3402 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. (1) To apply for a limited access monkfish permit, a completed application must be received by the Regional Administrator within 12 months of the effective date of these regulations.

(2) To renew a limited access monkfish permit, a completed application must be received by the Regional Administrator by the last day of the fishing year for which the permit is required. Failure to renew a limited access monkfish permit in any year bars the renewal or issuance of the permit in subsequent years.

(C) Additional qualification restrictions. (1) The qualification restrictions specified at paragraph (a)(1)(i)(C) of this section shall apply to limited access monkfish permits.

(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 under reconstruction between February 28, 1994 and February 27, 1995. Such a vessel must meet the qualification criteria as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991 and February 27, 1996.

(D) Change in ownership. (1) The same presumptions specified at paragraph (a)(1)(i)(D) of this section shall apply to change in ownership of vessels issued limited access monkfish permits.

(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 as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991 and February 27, 1996.

(E) Replacement vessels. (1) The replacement restrictions specified at paragraph (a)(1)(i)(E) of this section shall apply to limited access monkfish vessels.

(2) A vessel that replaces a vessel between February 27, 1995 and [insert the date of publication of the final rule], and that meets the qualification criteria set forth in paragraphs (a)(9)(i)(A)(1), (2), (3) or (4) of this section, but exceeds the 51 GRT vessel size criteria in paragraph (a)(9)(i)(A) of this section may qualify and fish under a Category B or D permit provided that it meets the qualification criteria in paragraphs (a)(9)(i)(A)(2) and (a)(9)(i)(A)(4) of this section.

(3) A vessel that replaces a vessel that fished for monkfish during February 28, 1991 to February 27, 1995 may use the original vessel's history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(1), (2), (3) or (4) of this section, unless the original vessel retained historical participation as specified in paragraph (a)(1)(i)(D) of this section or the original vessel no longer exists and had not been replaced by a third vessel according to the provisions in paragraph (a)(1)(i)(D) of this section. The

Regional Administrator may administer the provision in this paragraph (a)(9)(E)(3) as a qualification criterion for receiving a permit or as a ground for appeal of eligibility according to paragraph (a)(9)(i)(J) of this section.

(F) Upgraded vessel. (1) The upgrade restrictions specified at paragraph (a)(1)(i)(F) of this section shall apply to limited access monkfish vessels.

(2) A vessel upgrade that occurred between February 27, 1995 and [insert the date of publication of the final rule], and that meets the qualification criteria set forth in paragraphs (a)(9)(i)(A)(1), (2), (3) or (4) of this section but exceeds the 51 GRT vessel size criteria in paragraph (a)(9)(i)(A) of this section may qualify and fish under a Category B or D permit provided that it meets the qualification criteria in paragraphs (a)(9)(i)(A)(2) and (a)(9)(i)(A)(4) of this section.

(G) Consolidation restriction. The consolidation restriction specified at paragraph (a)(1)(i)(G) of this section shall apply to limited access monkfish vessels.

(H) Restriction on permit splitting. A limited access monkfish permit may not be issued to a vessel or its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(I) Notification of eligibility for 1999. If through either the procedures in paragraphs (a)(9)(i)(I)(1) or (2) of this section, the Regional Administrator determines that the vessel meets the criteria specified in paragraph (a)(9)(i)(A) of this section, a limited access monkfish permit shall be issued to the vessel. (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 paragraphs (a)(9)(i)(A)(1), (2), (3) or (4) of this section that they qualify for a limited access monkfish permit.

(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 paragraphs (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.

(J) 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 paragraphs (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.

(3) The hearing officer shall make a recommendation to the Regional Administrator.

(4) The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(K) Status of vessels pending appeal. 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. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. The vessel with an authorizing letter shall not exceed the annual allocation of monkfish DAS specified in § 648.92(b)(1) and must report the use of monkfish DAS according to the provisions in § 648.10(b) or (c). 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.

(L) Confirmation of Permit History. See paragraph (a)(1)(i)(J) of this section.

(M) Abandonment or voluntary relinquishment of permits. See paragraph (a)(1)(i)(K) of this section.

(ii) Monkfish bycatch permits. A vessel of the United States that has not been issued a limited access monkfish permit and is not fishing under a monkfish, multispecies or scallop DAS is eligible for and may be issued a monkfish bycatch permit and may retain and land monkfish subject to the restrictions in ? 648.95. A monkfish bycatch permit may be issued for the following reasons:

(A) Vessels fishing with large mesh in the GOM/GB Regulated Mesh Area. A monkfish bycatch permit may be issued to a vessel fishing in the GOM/GB Regulated Mesh Area with large mesh as defined in ? 648.80(a)(2)(i) while not on a monkfish, multispecies, or scallop DAS.

(B) Vessels fishing with large mesh in the SNE Regulated Mesh Area. A monkfish bycatch permit may be issued to a vessel fishing in the SNE Regulated Mesh Area with large mesh as defined in ? 648.80(b)(2)(i) while not on a monkfish, multispecies, or scallop DAS.

(C) Vessels fishing with large mesh in the MA Regulated Mesh Area. A monkfish bycatch permit may be issued to a vessel fishing in the MA Regulated Mesh Area with large mesh as defined in ? 648.104(a)(1) while not on a monkfish, multispecies, or scallop DAS.

(D) Vessels fishing with small mesh. A monkfish bycatch permit may be issued to a vessel fishing with small mesh (small mesh is any mesh smaller than large mesh as specified in paragraphs (A), (B), and (C) of this section) while not on a monkfish, multispecies, or scallop DAS.

(E) Small vessels. A monkfish bycatch permit may be issued to any multispecies vessel less than 20 feet in length that elects not to fish under the multispecies DAS program.

(D) Vessels fishing with handgear. A monkfish bycatch permit may be issued to a vessel fishing with rod and reel or handlines while not on a monkfish, multispecies, or scallop DAS.

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 (18.1 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 or monkfish, sea scallop, summer flounder, surf clam and ocean quahog, mackerel, squid, and butterfish, or 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 paragraphs (a)(1)(i) and (a)(2)(i), paragraph (b)(1)(i) and the first sentence of paragraph (b)(1)(iii) are revised to read as follows:

? 648.7 Recordkeeping and reporting requirements.

(a) \* \* \*

(1) \* \* \*

All NE multispecies or monkfish, sea scallop, summer flounder, mackerel, squid, and butterfish, or scup, or black sea bass dealers must provide: Dealer name and mailing address; dealer 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 species (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.

\* \* \*

\* \* \*

(2) \* \* \*

(i) All NE multispecies or monkfish, sea scallop, summer flounder, mackerel, squid, and butterfish, or 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 or operator of any vessel issued a moratorium vessel permit for summer flounder, or for mackerel, squid, or butterfish, or 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 VTS 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, 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 VTS 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 VTS requirements.

\* \* \* \* \*

(d) Presumption. If a VTS 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), and paragraphs (b)(1), (c), (c)(2), and (c)(5) are revised to read as follows:

? 648.10 DAS notification requirements.

\* \* \* \* \*

(b) VTS 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 VTS 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 VTS 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 VTS Demarcation Line specified under paragraph (a) of this section are deemed to be fishing under the DAS program, unless the vessel's owner, or 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 VTS 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 VTS, scallop vessels qualifying for a DAS allocation under the occasional category and who have not elected to fish under the VTS 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:

(1) \* \* \*

(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 (181.44 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 bycatch trip limits specified in ?? 648.94(b) and (c) and 648.95 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) 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:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, or black sea bass, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, or black sea bass, or other specimens taken by the vessel.

\* \* \* \* \*

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 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 (a)(114) through (123), (x)(8) and (y)(1) through (13) are added to read as follows:

? 648.14 Prohibitions.

(a) \* \* \*

(49) Violate any of the restrictions on fishing with scallop dredge gear specified in ?? 648.80(h) and 648.94(c).

\* \* \*

(103) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than transport, any multispecies or monkfish, unless the dealer or transferee has a dealer permit issued under ? 648.6.

\* \* \*

(114) Fish for, possess, or land monkfish, unless:

(i) The monkfish are being fished for or were harvested in or from the EEZ by a vessel holding a valid monkfish permit under this part, and the operator on board such vessel has been issued an operator's permit and has a valid permit on board the vessel;

(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 recreational fishing vessel.

(115) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer monkfish from one vessel to another vessel, unless both vessels have not been issued monkfish permits and both fish exclusively in state waters, or unless authorized in writing by the Regional Administrator.

(116) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any monkfish from a trip, unless the vessel is holding a monkfish permit, or unless the monkfish were harvested by a vessel without a monkfish permit that fishes for monkfish exclusively in state waters.

(117) Operate or act as an operator of a vessel fishing for or possessing monkfish in or from the EEZ, or holding a monkfish permit without having been issued and possessing a valid operator's permit.

(118) 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 of mesh whose size is smaller than the minimum mesh size specified in ? 648.91(c)(2).

(119) Violate any provision of the bycatch permit restrictions as provided in ?? 648.4(a)(9)(ii) and 648.95.

(120) Possess, land, or fish for monkfish while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in ? 648.53, or fishing under a general scallop permit, unless the vessel has not been issued a monkfish permit and fishes for monkfish exclusively in state waters.

(121) 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 monkfish permit.

(122) Fail to comply with the monkfish size limit restrictions of ? 648.93.

(123) Fail to comply with the monkfish liver landing restrictions of ? 648.94(d).

\* \* \*

(x) \* \* \*

(8) Monkfish. All monkfish possessed on a vessel issued a 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 at any time during a trip, or land per trip more than the possession 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.

(2) If fishing with a VTS unit under ? 648.10:

(i) Fail to have a certified, operational, and functioning VTS 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 VTS usage as specified in ? 648.10.

(3) Combine, transfer, or consolidate DAS allocations.

(4) 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).

(5) 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).

(6) Fail to comply with any provision of the DAS notification program as specified in ? 648.10.

(7) 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).

(8) If the vessel has been issued a limited access Day gillnet category designation, fail to comply with the restriction and requirements specified in ? 648.92(b)(8)(i).

(9) Fail to produce or, cause to be produced, gillnet tags when requested by an authorized officer.

(10) Produce, or cause to be produced, gillnet tags under ? 648.92(b)(8)(i) without the written confirmation from the Regional Administrator described in ? 648.92(b)(8)(ii).

(11) Tag a gillnet or use a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel.

(12) Sell, transfer, or give away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

(13) If the vessel has been issued a Trip gillnet category designation, fail to comply with the restrictions and requirements specified in ? 648.92(b)(8)(ii).

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:

(a) Bottom-tending fixed gear, including, but not limited to gillnets and longlines, designed for, capable of, or fishing for NE multispecies and/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 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. Revise the heading of ? 648.90 and paragraph (c) 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 under ? 305(c) of the Magnuson-Stevens Act.

22. A new ? 648.91 is 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°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, then westward to 70°W. longitude, then north to the shoreline at Cape Cod, MA (point A).

(c) Gear restrictions. (1) Authorized gear while on a monkfish DAS. (i) A vessel may fish with large mesh trawl nets, large mesh beam trawls, large mesh gillnets or any hook gear while fishing under a monkfish DAS. Large mesh means mesh no smaller than 10-inches square or 12-inches diamond throughout the codend for at least 45 continuous meshes for trawl vessels fishing under monkfish DAS; except for trawl vessels with a Category C or D limited access monkfish permit fishing under both a monkfish and multispecies DAS, which mesh must then conform to the regulations for the NE Multispecies FMP. For

vessels fishing with gillnets under a monkfish DAS, large mesh means mesh no smaller than 10-inches diamond.

(ii) A vessel may not fish with dredges nor may dredges be aboard when fishing under a monkfish DAS.

(iii) A vessel with a hook-only limited access multispecies permit and a limited access monkfish permit may also fish with large mesh trawl nets, large mesh gillnets or any hook gear while fishing under a monkfish DAS providing such vessel operates in a fishery that is exempt from the NE multispecies DAS regulations specified in ? 648.80 and possesses no regulated multispecies.

(iv) Non-conforming gear must be stowed as specified in ? 648.81(e).

(v) The mesh restrictions in paragraphs (c)(2)(i),(ii) and (iii) 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>)).

(2) Minimum mesh size. (i) Trawl vessels fishing under a monkfish DAS. Except as provided in paragraph (c)(2)(ii) of this section, the minimum mesh size for any trawl net used by a vessel fishing under a DAS in the monkfish DAS program is 10-inch (25.4-cm) square or 12-inch (30.48-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 that coincides with the monkfish fishery management area being fished.

(ii) Vessels with category C or D limited access monkfish permits fishing under both a multispecies and monkfish DAS. When fishing under a multispecies and monkfish DAS at the same time, the minimum mesh size for a trawl net on a vessel with a category C or D limited access monkfish permit must conform with the Northeast multispecies regulations. Such vessels may use 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 that coincides with the monkfish fishery management area being fished.

(iii) Gillnet vessels fishing under a monkfish DAS. Any gillnet vessel fishing under a monkfish DAS, but not solely under a multispecies DAS, may use a gillnet with mesh no smaller than 10-inches diamond.

23. A new ? 648.92 is added to subpart F to read as follows:

? 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, 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)(J) 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) DAS program--permit categories and allocations.

(1) Category A, B, C and D permit holders. Beginning with the 1999 fishing year (May 1, 1999) and extending through April 30, 2000, all limited access monkfish permit holders with a category A, B, C or D permit as

stipulated in ? 648.4(a)(9)(i)(A) shall be allocated 40 monkfish DAS. Limited access monkfish permit holders with a category A, B, C or D permit shall also be allocated 40 monkfish DAS at the beginning of the 2000 and 2001 fishing years. No monkfish DAS will be allocated to any category in fishing year 2002 and subsequent fishing years, beginning May 1, 2002 and extending through April 30 of each following year unless superseded by a framework action.

(2) Category C and D permit holders. Limited access multispecies and scallop vessels holding a Category C or D monkfish permit and fishing under the monkfish DAS program will have the trip counted simultaneously against both monkfish DAS and 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 (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 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 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 DAS allocations. Adjustments in annual DAS allocations, if required to meet fishing mortality goals, may be implemented pursuant to the framework adjustment procedures of ? 648.96.

(8) Gillnet restrictions. A vessel issued a limited access monkfish permit fishing under a monkfish DAS with gillnet gear must obtain an annual designation as either a Day gillnet or Trip gillnet vessel prior to the beginning of the fishing year. A vessel must have written confirmation issued by the Regional Administrator on board indicating that the vessel is a Day or Trip gillnet vessel.

(i) Number and size of nets. A vessel may not fish with, haul, possess, or deploy more than 160 monkfish gillnets. A multispecies vessel 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 does not exceed the limitations and 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 monkfish gillnets fished, hauled, possessed, or deployed must have one 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 produce all net tags upon request by an authorized officer.

(iii) Lost tags. A vessel owner or operator must report lost, destroyed, and missing tag numbers by letter or fax to the Regional Administrator as soon as feasible 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 of 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) Day gillnet vessels. A Day gillnet vessel fishing with gillnet gear under a monkfish DAS will accrue 15 hours DAS for each trip greater than 3 hours but less than or equal to 15 hours. Such vessel will accrue actual DAS time at sea for trips less than or equal to 3 hours or greater than 15 hours. A Day gillnet vessel fishing with gillnet gear under 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)(A) of this section.

(B) Trip gillnet vessels. When fishing under a monkfish DAS, each trip made by a Trip gillnet vessel will be counted in hours from the time the vessel called into the DAS program until it has returned to port and called-out. When fishing under a monkfish DAS, a trip gillnet vessel is required to remove all gillnet gear from the water and bring the gear back to port before calling-out of a monkfish DAS under ? 648.10(c)(3).

24. A new ? 648.93 is added to subpart F to read as follows:  
 ? 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)

<u>Total Length</u>	<u>Tail Length</u>
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 forth cephalic dorsal spine to the end of the caudal fin. Any tissue anterior to the 4th dorsal spine will be ignored. If the 4th dorsal spine or the tail are 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. If the SFMA TAC is exceeded in year one of the management measures and no other measure has been implemented to meet the mortality objectives of the Monkfish FMP, the following size limit shall be implemented for vessels fishing or landing in the SFMA only:

MINIMUM FISH SIZES (Total Length/Tail Length)

<u>Total Length</u>	<u>Tail Length</u>
21 inches (53.3 cm)	14 inches (35.6 cm)

(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. Should the size limits depicted in paragraph (b)(1) of this section be implemented 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. 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.

25. A new ? 648.94 is added to subpart F to read as follows:  
? 648.94 Monkfish landings restrictions.

The following landing restrictions apply to all monkfish that are unloaded at the dock. Monkfish may be landed in either as tails only or in whole form, or any combination of the two. When both tails and whole fish are landed, the trip 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 (451.8 kg) whole weight trip limit and a 600 lb landing of whole fish shall, for example, allow for a maximum landing of tails of 101.2 lb (45.9 kg).

(a) Vessels fishing under the monkfish DAS program. (1) Vessels fishing under the monkfish DAS program prior to May 1, 2000. No monkfish trip limit applies to a vessel that is fishing under a monkfish day-at-sea.

(2) Vessels fishing under the monkfish DAS program May 1, 2000 and thereafter. If the SFMA TAC is exceeded in year one of the management measures and no other measure has been implemented to meet the mortality objectives of the Monkfish FMP, the trip limits specified in paragraphs (a)(2)(i), (ii), (iii) and (iv) of this section shall be implemented via a ?Notice Action?. The trip limits apply to any vessel fishing in the SFMA during a monkfish DAS. (i) Category A and C vessels. If the SFMA TAC is exceeded in year one of the management measures Category A and C vessels using mobile gear during a monkfish DAS may only land up to 1,500 lb (680.4 kg) tail-weight or 4,980 lb (2258.9 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(ii) Category B and D vessels. If the SFMA TAC is exceeded in year one of the management measures Category B and D vessels using mobile gear during a monkfish DAS may only land up to 1,000 lb (453.6 kg) tail-weight or 3,320 lb (1506 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(iii) Fixed gear. If the SFMA TAC is exceeded in year one of the management measures any vessel using fixed gear during a monkfish DAS may only land up to 300 lb (136.1kg) tail-weight or 996 lb (451.8 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(iv) Landing limits. (A) A vessel owner or operator may not exceed the trip limit based on DAS accrued at the time of landing if the vessel does not have sufficient DAS to account for such overage. Vessels calling-out of the monkfish DAS program under ? 648.10(c)(3) that have utilized only part of a DAS (less than 24 hours) may land up to an additional full daily trip limit of monkfish as specified in paragraphs (a)(2)(i),(ii) and (iii) of this section for that part of a 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 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 (a)(2)(i),(ii) and (iii) 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 (a)(2)(i),(ii) and (iii) of this section may come into port with and offload monkfish in excess of the landing limit as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that:

(1) The vessel operator does not call-out of the 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 (2,721.6 kg) tail-weight or 19,920 lb (9,035.7 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 (1,814.4 kg) tail-weight or 13,280 lb (6,023.8 kg) whole weight of monkfish and offloads some or all of its catch - cannot call out of the 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, DAS confirmation number, phone number, and 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 overage 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 (a)(2)(i) and (ii) 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 (a)(2)(iv)(B)(2) of this section.

(b) Vessels fishing during a multispecies DAS. (1) Category C and D vessels. (i) Category C and D vessels fishing during a multispecies DAS prior to May 1, 2002. No monkfish trip limit applies to a multispecies vessel that is fishing under a multispecies DAS in the NFMA. 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 (136.1 kg) tail-weight or 996 lb (451.8 kg) whole weight of monkfish per DAS while using mobile gear or 50 lb (22.7 kg) tail-weight or 166 lb (75.3 kg) whole weight while using fixed gear.

(ii) Category C and D vessels fishing during a multispecies DAS from May 1, 2002 and thereafter. Any vessel with a limited access monkfish permit that is fishing under a multispecies DAS in the NFMA

may land up to 300 lb (136.1 kg) tail-weight or 996 lb (451.8 kg) whole weight of monkfish per DAS, or 25 percent of the total weight of fish onboard, whichever is less. 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 (136.1 kg) tail-weight or 996 lb (451.8 kg) whole weight of monkfish per DAS or 25 percent of the total weight of fish onboard, whichever is less while using mobile gear or 50 lb (22.7 kg) tail-weight or 166 lb (75.3 kg) whole weight while using fixed gear.

(2) Vessels without limited access monkfish permits. (i) NFMA. Any vessel without a limited access monkfish permit that is fishing under a multispecies DAS in the NFMA may land up to 300 lb (136.1 kg) tail-weight or 996 lb (451.8 kg) whole weight of monkfish per DAS, or 25 percent of the total weight of fish onboard, whichever is less.

(ii) SFMA. If any portion of the trip is fished by a vessel without a limited access monkfish permit under a DAS in the SFMA, the vessel may only land up to 50 lb (22.7 kg) tail-weight or 166 lb (75.3 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(c) Vessels fishing under the scallop DAS program. (1) Category C and D vessels. (i) Category C and D vessels fishing under the scallop DAS program prior to May 1, 2002. Prior to May 1, 2002 a category C or D vessel fishing under a scallop DAS with a dredge aboard or under a net exemption provision may only land up to 300 lb (136.1 kg) tail-weight or 996 lb (451.8 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(ii) Category C and D vessels fishing under the scallop DAS program from May 1, 2002 and thereafter. From May 1, 2002 and thereafter, a category C or D vessel fishing under a scallop DAS with a dredge aboard may only land up to 200 lb (90.7 kg) tail-weight or 664 lb (301.2 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 without limited access monkfish permits. (i) Scallop dredge vessels without limited access monkfish permits fishing under the scallop DAS program prior to May 1, 2002. Prior to May 1, 2002 a vessel without a limited access monkfish permit fishing under a scallop DAS may land up to 300 lb (136.1 kg) tail-weight or 996 lb (451.8 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(ii) Scallop dredge vessels without limited access monkfish permits fishing under the scallop DAS program from May 1, 2002 and thereafter. From May 1, 2002 and thereafter a vessel without a limited access monkfish permit fishing under a scallop DAS may land up to 200 lb (90.7 kg) tail-weight or 664 lb (301.2 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(d) Monkfish liver landing restrictions. (1) A vessel authorized to land monkfish under this part may 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 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:

$$\frac{\text{aggregate weight of monkfish livers}}{\text{aggregate tail-weight of monkfish} \times 3.32 + \text{aggregate whole weight of monkfish}}$$

(e) Transiting. A vessel may transit between the NFMA and the SFMA for the purpose of fishing for monkfish, provided 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 (a)(2)(i),(ii) and (iii) of this section and is, therefore, subject to remain in port for the period of time described in paragraph (a)(2)(iv)(B)(1) 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 (a)(2)(i),(ii),(iii) and (iv) of this section be implemented under paragraph (a)(2) of this section, a vessel fishing under a monkfish DAS in the NFMA must declare into that area for a period 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 providing that it complies with the transiting provisions described in paragraph (e) of this section.

(g) Other landings restrictions. Vessels are subject to any other applicable landings restrictions of this part.

26. A new ? 648.95 is added to subpart F to read as follows:  
? 648.95 Monkfish bycatch permit restrictions.

(a) Vessels fishing with large mesh in the GOM/GB, SNE and MA Regulated Mesh Areas. A vessel issued a valid monkfish bycatch permit and fishing with large mesh in the GOM/GB, SNE or MA Regulated Mesh Areas is subject to the following restrictions:

(1) Vessels fishing with large mesh in the GOM/GB Regulated Mesh Area. A vessel issued a valid monkfish bycatch permit and fishing in the GOM/GB RMA with large mesh as defined in ? 648.80(a)(2)(i) while not on a monkfish, multispecies, or scallop DAS may retain and land monkfish (whole or tails) only up to five percent of the total weight of fish on board.

(2) Vessels fishing with large mesh in the SNE Regulated Mesh Area. A vessel issued a valid monkfish bycatch permit and fishing in the SNE RMA with large mesh as defined in ? 648.80(b)(2)(i) while not on a monkfish, multispecies, or scallop DAS may retain and land monkfish (whole or tails) only up to five percent of the total weight of fish on board.

(3) Vessels fishing with large mesh in the MA Regulated Mesh Area. A vessel issued a valid monkfish bycatch permit and fishing in the MA RMA with large mesh as defined in ? 648.104(a)(1) while not on a monkfish, multispecies, or scallop DAS may retain and land monkfish (whole or tails) only up to five percent of the total weight of fish on board.

(b) Vessels fishing with small mesh. A vessel issued a valid monkfish bycatch permit and fishing with small mesh (small mesh is any mesh smaller than large mesh as specified in paragraphs (a)(1), (2) and (3) of this section) while not on a monkfish, multispecies, or scallop DAS may retain and land only up to 50 lb (22.68 kg) tail-weight or 166 lb (75.30 kg) whole weight of monkfish per trip.

(c) Small vessels. A small vessel issued a valid monkfish bycatch permit (small vessel means any multispecies vessel less than 20 feet in length) that elects not to fish under the multispecies DAS program may retain and land only up to 50 lb (22.68 kg) tail-weight or 166 lb (75.30 kg) whole weight of monkfish per trip.

(d) Vessels fishing with handgear. A vessel issued a valid monkfish bycatch permit and fishing with rod and reel or handlines while not on a monkfish, multispecies, or scallop DAS may retain and land only up to 50 lb (22.68 kg) tail-weight or 166 lb (75.30 kg) whole weight of monkfish per trip.

27. A new ? 648.96 is added to subpart F to read as follows:  
? 648.96 Monkfish framework specifications.

(a) Annual review. The Monkfish Monitoring Committee (MMC) shall 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 shall 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 shall recommend target TACs and develop options necessary to achieve the 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 of this part.

(3) The Councils shall 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 the 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 New England or Mid-Atlantic Fishery Management Council 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 shall 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 two 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 shall 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 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 shall be published in the Federal Register on or 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 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 FMP objectives and is consistent with other applicable law. If the Councils fail to 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 it was rejected by either the New England or Mid-Atlantic Council; provided the option meets the Monkfish FMP 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. In year three (2001), the MMC shall evaluate threshold and target biological reference points. If adjustments are required a framework action will be taken in January 2002 to replace the existing (?default?) measures scheduled to take effect on May 1, 2002 (year four). 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) six 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 finds 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 two 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 shall develop and analyze appropriate management actions over the span of at least two Council meetings, one at each Council. The Councils shall 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 of this part.

(2) Adjustment process for gear conflicts. The Councils may develop a recommendation on measures to address gear conflict as defined under 50 CFR 600.10, 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 shall 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 ? 305(c) of the Magnuson-Stevens Act.

