

2008, the Pelagic Organism Decline (POD) Working Group summarized and provided a progress report of the studies and information collected in 2007 by the Interagency Ecological Program (IEP) (Baxter *et al.* 2008, pp. 1–52). The summary report did identify contaminants as having possible effects during flow pulses in the winter, but there is no evidence currently available that these pulse events cause toxicity to delta smelt (Baxter *et al.* 2008, p. 29).

We conclude that the petition presents substantial information to indicate a significant reduction in the population size of delta smelt since the time of listing and that reclassification of delta smelt from threatened to endangered may be warranted.

### Finding

We have reviewed the petition and literature cited in the petition and evaluated that information in relation to information available in our files. Based on this review, we find the petition presents substantial information that reclassification of the delta smelt from threatened to endangered may be warranted.

When we listed the delta smelt as threatened in 1993, the factors identified that threatened the species' continued existence included threats such as: water diversions, inadequacy of existing regulatory mechanisms, introduced species, and contaminants. For the most part, these factors continue to threaten the species, although the degree to which they each affect delta smelt populations likely has changed. Recent surveys have shown a substantial decline in delta smelt abundance from 2002 through 2007 (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1), indicating that the threats may be of higher magnitude or imminence than was thought at the time of listing.

As discussed above, we believe the petition provides substantial information indicating that a reclassification from threatened to endangered may be warranted. Specifically, substantial information was provided under Factor A (habitat loss, and water diversions), Factor D (the inadequacy of existing regulatory mechanisms), and Factor E (low population size). Therefore, we are initiating a status review to determine if reclassifying the species from threatened to endangered is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

### Significant Portion of the Species' Range

The petitioners seek to reclassify the delta smelt as endangered, indicating the species is in danger of extinction throughout all or a significant portion of its range. During our status review we will evaluate whether the best scientific and commercial information available supports reclassification and whether there may be a portion of the delta smelt's range that may be significant. As a result we will provide our analysis of significant portion of range in the 12-month finding.

### References Cited

A complete list of all references cited in this document is available, upon request, from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### Authors

The primary authors of this notice are staff of the California and Nevada Regional Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA 95825.

### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 2, 2008.

### Kenneth Stansell,

*Acting Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 080627793–8795–01]

RIN 0648–AW81

### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery

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

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

**SUMMARY:** NMFS is proposing to implement a new management measure for the monkfish fishery recommended in Framework Adjustment 6

(Framework 6) to the Monkfish Fishery Management Plan (FMP), which has been submitted jointly by the New England and Mid-Atlantic Fishery Management Councils (Councils). This action would eliminate the backstop provision adopted in Framework Adjustment 4 (Framework 4) to the FMP, which was implemented in October 2007. This provision would have adjusted, and possibly closed, the directed monkfish fishery in fishing year (FY) 2009 if the landings in FY 2007 exceeded the target total allowable catch (TTAC). Given the most recent information on the status of monkfish stocks, the backstop provision is no longer deemed necessary.

**DATES:** Written comments must be received no later than 5 p.m. eastern standard time, on August 11, 2008.

**ADDRESSES:** You may submit comments, identified by RIN number 0648–AW81, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal <http://www.regulations.gov>.
- Fax: (978) 281–9135, Attn: Emily Bryant.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Monkfish Framework 6.”

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

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only. Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), prepared for Framework 6 are available upon request from Paul Howard, Executive Director, New England Fishery Management Council (NEFMC), 50 Water Street, Newburyport, MA, 01950. The document is also available online at [www.nefmc.org](http://www.nefmc.org).

**FOR FURTHER INFORMATION CONTACT:** Emily Bryant, Fishery Management Specialist, phone (978) 281–9244, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:****Background**

The monkfish fishery is jointly managed by the Councils, with the New England Council having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA).

Framework 4 included a "backstop" provision that would adjust, and possibly close, the directed monkfish fishery in FY 2009 if the landings in FY 2007 exceeded the TTAC. This provision would adjust the days-at-sea (DAS) allocations for either or both management areas in FY 2009 if the TTACs are exceeded by between 10 and 30 percent during FY 2007, or close the directed fishery in FY 2009 if the TTACs are exceeded by more than 30 percent. Because of scientific uncertainty concerning the status of the monkfish resource, NMFS deferred implementing Framework 4 and conducted a new stock assessment. The Northeast Data Poor Stocks Working Group (DPWG) completed and accepted the new assessment in July 2007. The results of this assessment indicated that neither monkfish stock is overfished, overfishing is no longer occurring, and both stocks are rebuilt based on the new modeling approach and the newly recommended biomass reference points. The July 2007 assessment report emphasized, however, that in addition to the fact that this assessment was the first to use the new analytical model, there was a high degree of uncertainty in the analyses due to the dependence on assumptions about natural mortality, growth rates, and other model inputs. In light of this counsel, NMFS approved and implemented Framework 4 measures, which became effective on October 22, 2007 (72 FR 53942, September 21, 2007).

Framework Adjustment 5 (Framework 5), implemented on May 1, 2008 (73 FR 22831, April 28, 2008), adopted the revised reference points recommended by the DPWG, and implemented other measures that will reduce the likelihood of TTAC overages in FY 2008 and beyond. Under the revised biomass reference points in Framework 5, both monkfish stocks are no longer considered overfished, and are considered to be rebuilt. Therefore, there is no longer a stock rebuilding program for the monkfish fishery.

In support of the recent adjustments to the FMP, consistent with the results of the DPWG assessment, Framework 6 would eliminate the backstop provision

adopted in Framework 4. Available landings information for FY 2007 indicate that the TTAC was exceeded by more than 30 percent in the SFMA. Given the most recent information on the status of monkfish stocks, including the revised reference points established through Framework 5 and the expected minimal biological impact of a 30-percent TTAC overage on stock status, the backstop provision is no longer deemed necessary. In addition, as noted above, Framework 5 included measures aimed at keeping landings within the TTACs.

**Technical Correction to Monkfish FMP Regulations**

This rule proposes to correct the regulations implementing the FMP. The final rule implementing the Standardized Bycatch Recording Methodology (SBRM) Omnibus Amendment (73 FR 4736, January 28, 2008) inadvertently revised § 648.96(b)(5), thereby deleting the regulations pertaining to the backstop provision introduced by Framework 4. As a result, the text referencing the annual review process at § 648.96(a) is redundant with the existing text under § 648.96 (b)(5). Therefore, this action would remove the redundant text under § 648.96 (b)(5) referencing the annual review process and would simultaneously remove and reserve paragraph (b)(5) for the purpose of removing the reference to the TTAC overage backstop provision that was added through the final rule implementing Framework 4.

**Classification**

NMFS has determined that this proposed rule is consistent with the FMP and has preliminarily determined it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

An IRFA was prepared for Framework 6, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA consists of the discussion in the preamble of the proposed rule and this section, and the analysis of impacts in Framework 6. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and in the **SUMMARY** of this proposed rule. A copy of this analysis is available from the NEFMC (see

**ADDRESSES**). A summary of the analysis follows:

This action would remove an existing measure (TTAC overage backstop provision) that was implemented when there were concerns regarding potential overfishing of monkfish as the FMP neared the end of its rebuilding period. Changes in the biological reference points under Framework 5 showed that monkfish are no longer overfished, and overfishing is not occurring. In addition, current population modeling indicates that TTAC overage levels of 30 percent would not change the monkfish stock status. Consequently, retaining the existing effort reduction measures for FY 2009, under the no action alternative, would have a negative economic impact on the fishery, without materially aiding in the rebuilding of the stock. No other alternatives were considered because the purpose of the action is to remove a measure deemed unnecessary based upon best scientific information available.

The regulations implementing the FMP, found at 50 CFR part 648, authorize the Council to adjust management measures as needed to achieve FMP goals. The objective of this action is to achieve the goals of the FMP while minimizing adverse economic impacts. Thus, the proposed action is consistent with the goals of the FMP and its implementing regulations.

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses (\$4.0 million in gross sales). As of March 14, 2008, there were 765 limited access monkfish permit holders and 2,211 vessels holding an open access Category E permit. Based on vessel trip report records in FY 2006, 615 limited access permit holders participated in the monkfish fishery. During the same period, 567 incidental permit holders reported landing monkfish.

This action would affect limited access monkfish permit holders that fished, at some time, in the SFMA. Based on vessel activity reports from FY 2006 (the most recent fishing year for which complete information is available) this action could affect 462 limited access monkfish vessels, including 229 vessels that fishing only in the SFMA, and the 233 vessels that fished in both the NFMA and SFMA.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

**Economic Impacts of the Proposed Framework 6 Measure**

The proposed action is a single measure that would only affect limited access monkfish vessels that fish in the SFMA. In the absence of this measure, it is assumed that the directed monkfish fishery would close in the SFMA in FY 2009, based upon preliminary landings in FY 2007 indicating that the TTAC was exceeded by more than 30 percent. Conversely, under the proposed action, restrictions on effort would not be required in FY 2009. Using a trip model, it was estimated that the proposed measure would result in positive or neutral changes in vessel net revenues, crew payments, and monkfish revenues in FY 2009, compared to the status quo.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 2, 2008.

**John Oliver,**

*Deputy Assistant Administrator For Operations, 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 § 648.96, paragraph (b)(5) is removed and reserved, and paragraph (b)(6) is revised to read as follows:

**§ 648.96 Monkfish annual adjustment process and framework specifications.**

(b) \* \* \*

(6) *Management measures for FY 2010 and beyond.* If a regulatory action is not implemented to establish management measures for the monkfish fishery for FY 2010 or subsequent years, the management measures in effect during FY 2009 (i.e., trip limits and DAS allocations) shall remain in effect.

\* \* \* \* \*

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