

NATIONAL MARINE FISHERIES SERVICE'S
RECORD OF DECISION ON AMENDMENT 2 TO THE
MONKFISH FISHERY MANAGEMENT PLAN

I. Background

The monkfish fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils (Councils). The Councils have been developing Amendment 2 since January 2002 in order to bring the Monkfish Fishery Management Plan (FMP) into compliance with the National Environmental Policy Act (NEPA) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The purpose of Amendment 2 is to address a number of issues that arose out of the implementation of the original FMP, as well as issues that were identified during public scoping. Issues of concern specific to the original FMP include: The displacement of vessels from their established monkfish fisheries due to restrictive trip limits; unattainable permit qualification criteria for vessels in the southern end of the range of the fishery; discards (bycatch) of monkfish due to regulations (i.e., minimum size restrictions and incidental catch limits); and deficiencies in meeting NEPA requirements in accordance with the Joint Stipulation and Order resulting from the legal challenge American Oceans Campaign, et al. v. Daley (Civil Action No. 04-0811 (D.D.C. March 9, 2005)). Issues arising from public scoping include: Deficiencies in meeting Magnuson-Stevens Act requirements, including preventing overfishing and rebuilding overfished stocks; a need to improve monkfish data collection and research; the need to establish a North Atlantic Fisheries Organization (NAFO) exemption program for monkfish; multiple vessel baseline specifications for limited access monkfish vessels; a need to update environmental documents describing the impact of the FMP; and a need to reduce FMP complexity where possible. The intent of this action is to provide efficient management of the monkfish fishery while meeting the conservation objectives of the FMP.

II. Proposed Measures for Amendment 2

After evaluating all of the management measures contained in Amendment 2, and the analysis contained in the Final Supplemental Environmental Impact Statement (FSEIS), the National Marine Fisheries Service (NMFS) is approving all of the measures contained in the Northeast Regional Administrator's Decision Memorandum dated March 28, 2005. The approved management measures consist of the following: Closure of Oceanographer and Lydonia Canyons to vessels fishing on a monkfish day-at-sea (DAS); a 6-inch roller gear restriction for trawl vessels fishing under a monkfish DAS in the Southern Fishery Management Area (SFMA); an offshore monkfish fishery in the SFMA; a modified limited entry program for vessels fishing in the southern range of the fishery; a research DAS set-aside program; a North Atlantic Fisheries Organization (NAFO) Regulated Area Exemption Program; revisions to the monkfish incidental catch limits; a decrease in the monkfish minimum size in the SFMA to 11-inches tail length; removal of the 20-day spawning block requirement; and new frameworkable measures (bycatch issues, protected species interactions, and transferable DAS programs). All of the approved measures are considered to be the environmentally preferable alternative. A

description of these measures, and the rationale for their selection is provided in the following paragraphs.

MODIFICATION OF THE LIMITED ACCESS PERMIT QUALIFICATION FOR VESSELS AT THE SOUTHERN END OF THE FISHERY

Amendment 2 will provide vessels that do not possess a limited access monkfish permit with the opportunity to qualify for a new limited access monkfish permit through a modified limited entry program. In order to qualify for a limited access permit under this modified limited entry program, a vessel must demonstrate that it landed the qualifying amount of monkfish in the area south of 38°00' N. lat. (i.e., at a port located south of 38°00' N. lat.) during the qualification period of March 15 through June 15, during the years 1995 through 1998. Two permits will be available, depending on the amount of monkfish the vessel landed during the qualification period (the same landings levels that were required for the original monkfish limited access permits). To qualify for a category G permit, a vessel must demonstrate monkfish landings of at least 50,000 lb tail weight during the qualification period. To qualify for a Category H permit, a vessel must demonstrate monkfish landings of at least 7,500 lb tail weight during the qualification period. Vessels qualifying for a Category G or H permit will be restricted to fishing on a monkfish DAS south of 38°20' N. latitude.

The purpose of the modified limited entry program is to provide a renewed opportunity for vessels operating in the southern range of the monkfish fishery to qualify for a limited access monkfish permit because some vessel owners claim that they were not adequately notified of the monkfish control date established on February 27, 1995, because they did not possess Federal Northeast (NE) permits. Furthermore, the southern boundary of the monkfish fishery management unit was initially proposed as the VA/NC border, rather than the NC/SC border, leading some vessel owners to believe that they would not be affected by the FMP. The Council selected this as the preferred alternative because it addresses the concerns of these vessel owners by establishing a new limited access permit that is based on the characteristics of the southernmost fishery, while not opening up the entire fishery to new participants.

OFFSHORE FISHERY PROGRAM IN THE SFMA

Amendment 2 will establish an offshore monkfish fishery program that will allow vessels to elect to fish under a monkfish possession limit of 1,600 lb (tail weight) per monkfish DAS when fishing in the Offshore Fishery Program Area under specific conditions, regardless of the possession limit that would otherwise be applicable to that vessel. For a vessel electing to fish in this program, monkfish DAS will be prorated based on a possession limit ratio (the standard permit category possession limit applicable to non-program vessels fishing in the SFMA, divided by 1,600 lb (the possession limit per DAS specified for vessels fishing in the program)), multiplied by the monkfish DAS available to the vessel's permit category when fishing in the SFMA.

Vessels electing to fish in this program will be required to fish under the program rules for the entire fishing year and will receive a separate monkfish permit category (Category F). A vessel electing to fish in this program will be allowed to fish its monkfish DAS only within the

Offshore Fishery Program Area from October through April. In addition, enrolled vessels will be required to have on board a Vessel Monitoring System (VMS) that is operational during the entire October through April season, and will be subject to the gear requirements applicable to monkfish permit Category A and B vessels.

The Offshore Fishery Program is being implemented to help restore the offshore monkfish fishery that was essentially eliminated by the disapproval of the “running clock” in the original FMP. The running clock provision proposed in the original FMP would have provided vessels with the ability to account for any possession limit overages, provided that the vessel let its monkfish DAS clock run upon returning to port to account for these overages. Without the running clock provision, vessels have been discouraged from fishing in offshore areas under the current restrictive possession limits. Any vessel not electing to fish under this program will still be allowed to fish in the Offshore Fishery Program Area under the rules and regulations applicable to non-program vessels. This program is intended to provide flexibility to the fishing industry without impacting the mortality objectives of the FMP.

The Councils selected Area Option 1 as the preferred alternative because it provides access to the offshore monkfish resource on the southern flank of Georges Bank, and used an established management boundary line. In addition, the Councils selected DAS/Trip Limit Option 2, based on public comment that vessels would prefer a consistent annual trip limit, with increases in DAS if the annual target TAC is increased.

SFMA ROLLER GEAR RESTRICTION

Amendment 2 will implement a measure that restricts the roller gear on all trawl vessels fishing under a monkfish DAS in the SFMA to a maximum disc diameter of 6 inches. The purpose of this measure is to minimize, to the extent practicable, the adverse impact of monkfish trawl gear on EFH. This measure is specific to the SFMA, since it will help ensure that trawl vessels, which are known to be able to target monkfish more successfully with smaller roller gear in the SFMA than in the Northern Fishery Management Area (NFMA), do not fish in areas of more complex bottom characteristics, including the offshore canyon areas.

CLOSURE OF OCEANOGRAPHER AND LYDONIA CANYONS

Vessels fishing on a monkfish DAS will be prohibited from fishing in the Oceanographer and Lydonia Canyon closure areas, as defined in Amendment 2, regardless of gear used. The purpose of these closures is to minimize, to the extent practicable, the adverse impact of monkfish fishing on EFH, especially due to the potential impacts associated with an expansion of the directed offshore monkfish fishery under the Offshore Fishery Program being implemented through this amendment. The alternative to close up to 12 steep-walled canyons could have been more environmentally preferable if there was sufficient evidence indicating that the other 10 canyons, excluding Lydonia and Oceanographer canyons, contained deep-water corals, and, therefore, hard substrate, which has been determined to be moderately to highly vulnerable to the effects of bottom trawls and minimally vulnerable to bottom gillnets. In light of the lack of evidence indicating that these 10 canyons contain vulnerable bottom habitat, the environmentally preferable alternative is the Councils’ preferred alternative.

COOPERATIVE RESEARCH INITIATIVE PROGRAMS

Amendment 2 will implement two programs aimed at encouraging vessels to engage in cooperative monkfish research activities, including, but not limited to: Research to minimize bycatch and interactions of the monkfish fishery with sea turtles and other protected species; research to minimize the impact of the monkfish fishery on EFH; research or experimental fisheries for the purpose of establishing a monkfish trawl exempted fishery (under the NE Multispecies FMP) in the NFMA; research on the biology or population structure and dynamics of monkfish; cooperative surveys; and gear efficiency. The purpose of these two programs is to expand incentives for fishermen to participate in a range of monkfish research and survey activities by reducing the costs associated with conducting the research, and by streamlining the exempted fishing permit (EFP) process. For these reasons, the Councils selected these programs as their preferred alternative.

Under the DAS set-aside program, a pool of 500 DAS monkfish will be set aside to be distributed to vessels for the purpose of participating in cooperative monkfish research projects. These DAS will be obtained by removing 500 DAS from the total monkfish DAS available to the fleet prior to distribution to individual vessels. This will result in less than one DAS being deducted from each individual vessel allocation annually. For the 2005 fishing year, this set-aside will reduce individual vessel allocations by 0.7 DAS. NMFS will publish a Request for Proposals (RFP) and vessels will submit competitive bids to participate in specific research or survey projects. NMFS will then convene a review panel composed of the Council members from the Monkfish Oversight Committee, the Research Steering Committee, and other technical experts to review the proposals. NMFS will consider the recommendations of each panel member and award the contracts to successful applicants, including a distribution of DAS from the set-aside pool.

Any of the 500 DAS not distributed through the RFP process will be available to vessels through a DAS exemption program on a first-come-first-served basis. Under the DAS exemption program, vessels applying for an EFP will indicate the number of monkfish DAS they will require to complete their research project. NMFS will then review the EFP application and, if approved, issue the permit exempting the vessel from monkfish DAS usage requirements. The total number of monkfish DAS that could be used in the two programs (distributed under the RFP process or used in the exemption program) could not exceed the originally established 500 DAS annual set-aside pool. For any DAS exemption request that exceeds the 500 DAS set-aside analyzed in the FSEIS for Amendment 2, the applicant will be required to prepare an analysis of the impacts of the additional DAS effort that fully complies with the requirements of NEPA.

NAFO REGULATED AREA EXEMPTION PROGRAM

Amendment 2 will implement an exemption from certain FMP regulations for vessels that are fishing for monkfish under a High Seas Permit in the NAFO Regulated Area and transiting the Exclusive Economic Zone (EEZ) with monkfish on board or landing monkfish in U.S. ports. Similar to the NAFO waters exemption in the NE Multispecies FMP, monkfish vessels enrolled in the NAFO Regulated Area Exemption Program will be exempt from the monkfish regulations pertaining to permit requirements, minimum mesh size, effort control (DAS), and possession

limits. Further, monkfish caught from the NAFO Regulated Area will not count against the monkfish total allowable catch, provided: The vessel has on board a letter of authorization issued by the Regional Administrator; except for transiting purposes, the vessel fishes exclusively in the NAFO Regulated Area and does not harvest fish in, or possess fish harvested from, the EEZ; when transiting the EEZ, all gear is properly stowed and not available for immediate use; and the vessel complies with all High Seas Fishing Compliance Permit and NAFO conservation and enforcement measures while fishing in the NAFO Regulated Area. The Councils selected this exemption program as their preferred alternative because it will provide additional flexibility to monkfish vessels without compromising the mortality objectives of the FMP.

INCIDENTAL CATCH PROVISIONS

Three adjustments to the monkfish incidental catch limits are being implemented through Amendment 2. The first adjustment will increase the current 50-lb possession limit to 50 lb per day, or partial day, up to a maximum of 150 lb per trip, for vessels not fishing under a monkfish DAS and fishing with handgear and small mesh (see below), and for NE multispecies limited access vessels that hold a Small Vessel Exemption permit. Small mesh is defined as mesh smaller than the NE multispecies minimum mesh size requirements applicable to vessels fishing in the Georges Bank and Gulf of Maine Regulated Mesh Areas (RMAs), and the Southern New England RMA east of the boundary for the Mid-Atlantic Exemption Area. For vessels fishing in the Southern New England and Mid-Atlantic RMAs west of the Mid-Atlantic Exemption Area boundary, small mesh is defined as mesh smaller than the minimum mesh size applicable to limited access summer flounder vessels. The Councils selected this incidental catch limit as the preferred alternative because it would reduce regulatory discards on multi-day squid and whiting trips, while not being high enough to create an incentive for vessels to target monkfish on those trips.

The second adjustment will implement the same incidental monkfish possession limit of 50 lb per day, or partial day, up to a maximum of 150 lb per trip, for vessels fishing with surfclam or ocean quahog hydraulic dredges, and General Category sea scallop vessels fishing with a scallop dredge. These vessels are currently prohibited from retaining monkfish. For the purposes of these new possession limits, a day will be counted starting with the time the vessel leaves port (as recorded in its Vessel Trip Report), or, if the vessel has an operational VMS, when the vessel crosses the VMS demarcation line. The Councils selected this incidental catch limit as the preferred alternative for the same reasons outlined above for small mesh and handgear vessels. Furthermore, the Councils felt that uniform incidental catch limits, to the extent they are consistent with the fishery characteristics and FMP goals, was important for ease of compliance and enforcement.

The third monkfish incidental catch limit adjustment will be applicable to vessels fishing with large mesh in the NE Multispecies Mid-Atlantic Exemption Area (an area defined as west of 72° 30' N. long. and which extends eastward around Long Island, NY). This adjustment will increase the current 50-lb possession limit to 5 percent of the total weight of fish on board, up to a maximum of 450 lb, based on tail weight. The Councils selected this alternative as the preferred alternative because the summer flounder fishery in the SFMA has a higher incidental

monkfish catch. Thus, this measure would reduce regulatory discards. The possession limit cap of 450 lb per trip was included in this measure because it would prevent summer flounder vessels from targeting monkfish, and because it would not be equitable to allow an incidental catch that is higher than the possession limit for the directed monkfish fishery in this management area in some years.

DECREASE IN MINIMUM FISH SIZE

Amendment 2 will implement a measure to reduce the minimum fish size for monkfish in the SFMA to 11 inches tail length, 17 inches total length, from the current limit of 14 inches tail length, 21 inches total length. This change makes the minimum size for the SFMA consistent with the minimum fish size for the NFMA, simplifying the FMP rules and improving enforceability. Minimum fish size regulations have been widely used in FMPs on the basis that they discourage the targeting of small fish, and increase yield-per-recruit if successfully linked to gear with appropriate size-selectivity. Monkfish limited access trawl vessels that are fishing under a combined monkfish/multispecies DAS are authorized to use the minimum regulated mesh size authorized under the NE Multispecies FMP. As a result, these vessels already catch monkfish smaller than the current minimum fish size of 14 inches tail length. Until there is sufficient information linking trawl mesh-size to the size of monkfish retained, the Councils determined that it is important to minimize the regulatory discards associated with vessels targeting monkfish using minimum regulated groundfish mesh. A reduction in the minimum fish size for the SFMA, while keeping the minimum mesh size requirements constant, will have the effect of converting some monkfish discards to landings and reducing monkfish bycatch (regulatory discards), without changing the yield-per-recruit or promoting the targeting of small fish. In addition, a uniform minimum size limit for both management areas reduces FMP complexity, making this management measure more enforceable and less confusing to the fishing industry. Further, allowing vessels to land monkfish that would otherwise have been discarded, due to a larger minimum size limit, will improve the catch data used in the stock assessment and management process. For the reasons specified above, the Councils selected the decrease in minimum mesh size as their preferred alternative.

REMOVAL OF 20-DAY BLOCK REQUIREMENT

Current monkfish regulations require limited access monkfish permit holders to take a 20-day block out of the fishery during April through June each year, paralleling a similar regulation in the NE Multispecies FMP that applies March through May. The Councils have chosen to eliminate this requirement in Amendment 2 for monkfish limited access Category A and B vessels since it imposes an enforcement burden and increases the regulatory burden on monkfish vessels with no apparent biological or economic benefit. This change does not affect the requirement for monkfish limited access vessels that also hold a NE multispecies limited access permit (Category C and D vessels) since these vessels must abide by the NE multispecies 20-day block requirement when fishing under a monkfish/multispecies DAS.

MODIFICATION OF THE FRAMEWORK ADJUSTMENT PROCEDURES

Amendment 2 will include three additions to the list of actions that can be taken under the existing framework adjustment procedure: Transferable monkfish DAS programs; measures to minimize the impact of the fishery on endangered or protected species; and measures to implement bycatch reduction devices. The Councils have chosen to add these measures to the list of frameworkable items under the Monkfish FMP since it would reduce the time required to implement such regulations, which otherwise would have to be done through an FMP amendment process.

III. Other Alternatives Contained in Amendment 2

The Councils also considered other fishery management alternatives, including measures to practicably minimize adverse fishing impacts on EFH. The other management alternatives considered in Amendment 2 can be broken down into six groupings: Monkfish DAS usage alternatives; EFH alternatives; monkfish limited entry program alternatives for vessels fishing south of 38°N. lat.; Offshore Fishery Program alternatives; vessel baseline alternatives; and miscellaneous alternatives. A complete discussion of the reasons why the Councils did not select these alternatives is provided in Section 4.2.2 of the FSEIS. A summary of this rationale is provided in the following paragraphs.

The monkfish DAS usage alternatives consisted of an alternative to de-couple monkfish DAS from Northeast (NE) multispecies and scallop DAS in the SFMA only, and an alternative to de-couple monkfish DAS by annual declaration. Under the DAS de-coupling alternatives were several options, which included fleet DAS, individual DAS, and options for transferable monkfish DAS. The Councils decided to not select any of the measures to de-couple monkfish DAS as their preferred alternative due to the overwhelming opposition from the public, the Monkfish Advisory Panel, and the Monkfish Oversight Committee. The public, advisors, and Committee members expressed extreme concern about the potential increase in fishing effort that would result from de-coupling DAS, and the impact of this increased effort on the monkfish rebuilding program, and the rebuilding programs of other species. In addition, active participants in the monkfish fishery in the SFMA were concerned that an increase in effort would lead to further reductions in trip limits and DAS. The Councils also considered the impact of the alternatives to de-couple monkfish DAS on skates and EFH in making their decision.

The other EFH alternatives considered by the Councils, in addition to the no action alternative, included: The complementary benefits of other Amendment 2 alternatives (EFH Alternative 2); an alternative to modify the configuration of monkfish trawl gear (EFH Alternative 4, Option 2); and an alternative to close of up to 12 large, steep-walled canyons to monkfish fishing (EFH Alternative 5C). The Councils decided not to select the no action alternative or EFH Alternative 2 because these alternatives would not have implemented new management measures, and, therefore, would not minimize the impacts of monkfish fishing on EFH to the extent practicable. The Councils did not select the trawl gear modification alternative since they determined, based on comments received, that further testing of such a net and/or its components is needed before it is required for commercial use. Furthermore, since the Councils recommended to not de-couple monkfish DAS in Amendment 2, one of the stated conditions of this alternative was no longer

met. The Councils' selected the Lydonia and Oceanographer Canyon closure areas (EFH Alternative 5AB) as their preferred alternative due to considerable evidence from research conducted in these 2 canyon areas indicating the presence of deep-water corals, and, therefore, vulnerable hard substrate. However, the same information was not available for the other 10 canyon areas include in EFH Alternative 5C. Thus, until more data is available on the other 10 canyons in the region, the Councils supported closing only those canyons containing known coral, and, therefore, sensitive bottom habitat.

The Councils also considered four other alternatives, including the no action alternative, to modify the monkfish limited entry program to include vessels at the southern end of the fishery. Under all the alternatives, including the proposed action, vessels that would qualify for a limited access monkfish permit under the revised criteria would be restricted to fishing south of 38°20' N. lat. The only difference between the non-preferred monkfish moratorium alternatives and the proposed action is the qualification period. The qualification periods for the non-preferred alternatives are as follows: Alternative 1, the four years prior to June 15, 1998; Alternative 2, the four years prior to June 15, 1997; Alternative 4, the four years prior to June 15, 1997, where landing took place during the months of March 15 - June 15. The Councils chose not to select the no action alternative since it would not have addressed the issue of the unintentional exclusion of vessels fishing in the southern range of the monkfish fishery. In addition, the Councils chose not to select the other alternatives to modify the monkfish limited entry program because the alternatives did not fully represent the time period during which vessels became active in the monkfish fishery in this region.

For the Offshore Fishery Program, the Council considered a total of two area options, and two DAS/trip limit options, including the proposed action. The non-preferred area option had a northern boundary that ended at the southern boundary of the monkfish/skate trawl exemption line (40°10' N. lat.), versus following the northern boundary of the *Loligo* exemption line (preferred alternative). This area alternative was not selected due to public comments received in support of the preferred alternative, and because the non-preferred alternative would have eliminated much of the offshore monkfish fishery on the southern flank of Georges Bank. The non-preferred DAS/trip limit option would have provided vessels participating in the Offshore Fishery Program with 3 different choices for a DAS/trip limit ratio (1:2, 1:3, or 1:4) to be used in place of the standard DAS/trip limits applicable to all vessels. Under this alternative, vessels would have been required to select a DAS/trip limit ratio at the same time they enrolled in the Offshore Fishery Program. The Councils chose not to select this trip limit alternative because it was considered overly complicated, and because the public supported a 1,600 lb (tail weight) trip limit per DAS, with the potential for increased DAS depending on the annual trip limits determined for the regular fishery in the SFMA. The Councils chose not to select the no action alternative because it would not address the problems (for the historical offshore monkfish fishery) associated with the disapproval of the 'running clock' procedure contained in the original FMP.

The Councils considered an alternative that would provide owners of monkfish limited access vessels with a one-time opportunity to reset their vessel's monkfish permit baseline to be the characteristics of the vessel when it was issued its first Federal limited access permit as a measure of concern. A monkfish limited access vessel is restricted to upgrading its length

overall and tonnage by 10 percent, and horsepower by 20 percent of the vessel's specifications at the time it was issued a monkfish limited access permit. Since the monkfish limited access program was not implemented until 1999, vessels that were also issued a prior limited access permit under another FMP, and that also downsized the vessel characteristics (either through a vessel replacement or modifications to the vessel, such as an engine replacement) in the time period between the issuance of the two permits, have two different vessel permit baselines--one for the characteristics of the vessel initially issued a limited access permit, and one for the vessel characteristics at the time the monkfish limited access permit was issued. This situation limits the ability of a monkfish limited access vessel owner to transfer that vessel's limited access permits to another vessel since the size of the replacement vessel would be constrained by the smaller vessel baseline, unless the permit holder is willing to give up the monkfish limited access permit. Although this alternative was the Councils' preferred alternative, NMFS is not approving this measure because it does not comply with National Standard 7 of the Magnuson-Stevens Act. A complete discussion concerning the rationale for disapproving this measure is provided in Section VI.

The remaining fishery management alternatives considered by the Councils addressed the following issues: Minimum fish sizes, minimum trawl mesh size, incidental catch limits, spawning block/closed season, NFMA Trawl experimental fishery, change in fishing year, and prorating of DAS. Complete descriptions of these non-preferred alternatives and the reasons why they were not selected are provided in Section 4.2.2 of the FSEIS.

IV. Factors Considered in Making a Decision on the Proposed Action

NMFS and the Councils are required by the Magnuson-Stevens Act, the agency's National Standard Guidelines, the EFH regulations, and other applicable law to determine whether Amendment 2 contains adequate measures to prevent overfishing and achieve optimum yield on a continuing basis, minimize bycatch to the extent practicable, and minimize to the extent practicable the adverse effects of fishing on EFH, among other things.

With regard to EFH, NMFS may only implement those measures that minimize the adverse effects of fishing on EFH that are practicable, as well as compliant with the National Standards and other provisions of the Magnuson-Stevens Act. The EFH regulations provide guidance on conducting a practicability analysis on alternatives considered to minimize fishing effects on EFH. To make this determination, the Councils and NMFS are encouraged to consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the Nation, consistent with the National Standards. A practicability analysis was prepared for Amendment 2 and is contained in Section 6.3.3 of the FSEIS. NMFS is limited in authority under the Magnuson-Stevens Act to choose only those alternatives that meet the EFH requirements of the statute. Consistent with the Magnuson-Stevens Act, NMFS has approved only those alternatives that minimize, to the extent practicable, adverse effects of fishing on EFH.

V. Decision on the Proposed Action

Through the FSEIS as documented in this ROD, NMFS analyzed alternatives, associated environmental impacts, the extent to which the impacts could be mitigated, and considered the objectives of the proposed action. NMFS has also considered public and agency comments received during the NEPA and Magnuson-Stevens Act review periods. In balancing the analysis and public interest, NMFS has decided to partially approve the Councils' preferred alternatives contained in Amendment 2. NMFS also concludes that all practicable means to avoid, minimize, or compensate for environmental harm from the proposed action have been adopted. A description of the preferred alternatives, including the rationale for selecting these alternatives, is provided under Section II of this ROD. The NMFS believes that, overall, the preferred alternatives represent the environmentally preferable alternatives when considering the degree of environmental and economic effects, and benefits achieved and balanced by these measures, and in light of statutory mandates of the Magnuson-Stevens Act. Further, NMFS believes that these alternatives will promote national environmental policy as discussed in Section 101 of NEPA. NMFS also concludes that all practical means to avoid, minimize, or compensate for environmental harm from the proposed action have been adopted. This decision is based on the rationale contained in the Regional Administrator's Decision Memorandum dated March 28, 2005, the analyses prepared for Amendment 2 and the FSEIS, and all other analytical documents prepared for this action.

Finally, NMFS has determined that the analysis conducted in the EFH components of the FSEIS for Amendment 2 are necessary to minimize, to the extent practicable, the adverse effects of fishing on EFH, and is implementing each of the preferred habitat alternatives contained in Amendment 2. These alternatives consist of the closure of Oceanographer and Lydonia Canyons to vessels fishing on a monkfish DAS and a 6-inch roller gear restriction for trawl vessels fishing under a monkfish DAS in the SFMA.

VI. Disapproved Elements

Vessel Baseline Modification

A process for providing a monkfish limited access vessel owner with a one-time opportunity to reset their vessel's monkfish permit baseline characteristics to be the characteristics of the vessel first issued a Federal limited access permit was proposed in Amendment 2. This proposed management measure has been disapproved because it does not comply with National Standard 7 of the Magnuson-Stevens Act. National Standard 7 of the Magnuson-Stevens Act states, "Conservation and management shall, where practicable, minimize costs and avoid unnecessary duplication." Further, the regulatory guidelines for implementing National Standard 7 found at 50 CFR 600.340(d) state, "The supporting analysis for FMPs should demonstrate that the benefits of fishery regulations are real and substantial relative to the added research, administrative, and enforcement, as well as costs to the industry of compliance." A monkfish limited access vessel is restricted to upgrading its length overall and tonnage by 10 percent, and horsepower by 20 percent of the vessel's specifications at the time it was issued a monkfish limited access permit. Since the monkfish limited access program was not implemented until 1999, monkfish vessels that were issued a prior limited access permit under another FMP may

have two different vessel permit baselines--one for the characteristics of the vessel initially issued a Federal limited access permit, and one for the characteristics of the vessel at the time the monkfish limited access permit was issued. This situation limits the ability of the vessel owner to transfer the permit to another vessel since the size of the replacement vessel would be constrained by the smaller vessel baseline. The vessel baseline modification measure proposed in Amendment 2 would have provided monkfish limited access vessel owners with a one-time opportunity to reset their vessel's monkfish permit baseline characteristics to be the characteristics of the larger vessel first issued a Federal limited access permit. Such vessels would then have the theoretical benefit of being able to fish a larger vessel in both the monkfish and NE multispecies fisheries. There is no way to accurately predict, however, how many vessels that have inconsistent vessel baselines would actually exercise their right to obtain and fish with a larger vessel. Accordingly, it is not possible to determine that these potential benefits are "real and substantial." Moreover, this proposed measure would only have addressed the multiple baseline issue with respect to the monkfish fishery, creating the need to address separately similar measures in other FMPs in order to fully address the larger issue of multiple baselines across all fisheries. Handling the multiple baseline issue in such a piece-meal manner would require the Councils and NMFS to develop and implement duplicate measures under each FMP, resulting in unnecessary administrative burden on the Government and on limited access permit holders. Upon implementation of such measures in each FMP, owners of vessels with multiple limited access permits would be required to modify their vessel's baseline for that particular fishery, potentially requiring a vessel owner to change a single vessel's baseline multiple times. Further, the potential benefits associated with addressing the multiple baseline issue in each individual FMP would not be fully realized until measures are implemented in all FMPs having limited access permits. Given the uncertainty of whether any fishing vessels would actually exercise their right to reset their vessel baseline under the baseline modification program proposed in Amendment 2, NMFS has determined that, at this time, the speculative benefits of this measure are not "real and substantial" relative to the added administrative and enforcement costs, as well as the costs to the industry of compliance. It would be more efficient, comprehensive, and less confusing to the public for the Councils to address the vessel baseline issue across all FMPs in an omnibus amendment.

Bycatch Reporting Methodology

NMFS is rejecting the Councils' determination and analysis with respect to the bycatch reporting methodology contained in Amendment 2, and is sending that portion of Amendment 2 back to the NEFMC for further consideration, development, and analysis consistent with the recent Federal court decision in Oceana v. Evans. Although there is a bycatch reporting methodology established in the FMP and Amendment 2, it has similar deficiencies as the bycatch reporting methodology in Amendment 13. In Oceana v. Evans, the Court concluded that the bycatch reporting methodology provisions contained in Amendment 13 did not satisfy the requirements of the Magnuson-Stevens Act because they do not fully evaluate reporting methodologies to assess bycatch, they do not mandate a standardized reporting methodology, including minimum levels of observer coverage, and they fail to respond to potentially important scientific evidence involving accuracy versus precision in determining appropriate levels of observer coverage. Because the monkfish fishery largely overlaps with the NE multispecies fishery, the Amendment 2 bycatch reporting methodology heavily relies on the methodology in the NE Multispecies

FMP. Thus, there is little doubt the Amendment 2 bycatch reporting methodology would be found deficient for the same reasons as the bycatch reporting methodology contained in Amendment 13.

Rejecting the bycatch reporting methodology provisions contained in Amendment 2 does not vitiate the partial approval of other measures. As stated by the Court in Oceana v. Evans in rejecting an analogous section in Amendment 13, the bycatch reporting methodology provision “is severable from the balance of the Amendment,” and, “no purpose would be served by vacating other parts of the FMP, and such an approach would be unnecessarily disruptive.” The partially approved measures in Amendment 2 implement improvements to the protection of EFH, minimization of bycatch, and provide additional benefits to the fishing industry. To prevent their implementation, while awaiting a revised bycatch reporting methodology provision, would unnecessarily deny the environment and monkfish fishery the benefits of Amendment 2. Moreover, the Monkfish FMP does include a bycatch reporting methodology, albeit one in need of improvement, that will be in place during the period when the Council further considers the methodology consistent with Oceana v. Evans.

CONTACT PERSON

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Date