

Dated: March 30, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.040212056-4101-02; I.D. 020604B]

RIN 0648-AR89

Fisheries of the Northeastern United States; Monkfish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS implements measures to establish target total allowable catch (TAC) levels for the monkfish fishery for the 2004 fishing year (FY), and adjust trip limits and days-at-sea (DAS) for limited access monkfish vessels fishing in the Southern Fishery Management Area (SFMA) based upon the target TAC setting and trip limit and DAS adjustment methods established in Framework Adjustment 2 (Framework 2) to the Monkfish Fishery Management Plan (FMP). Based on these methods, this final rule establishes FY 2004 target TACs of 16,968 mt for the Northern Fishery Management Area (NFMA), and 6,772 mt for the SFMA; adjusts the trip limits for vessels fishing in the SFMA to 550 lb (250 kg) tail weight per DAS for limited access Category A and C vessels, and 450 lb (204 kg) tail weight per DAS for limited access Category B and D vessels; and restricts the FY 2004 DAS available for monkfish limited access vessels fishing in the SFMA to 28 DAS.

DATES: Effective May 7, 2004.

ADDRESSES: Copies of the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available upon request from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298. Copies of the Environmental Assessment (EA) prepared for Framework Adjustment 2 to the FMP are available upon request from Paul Howard, Executive Director, New England Fishery Management

Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, (978) 281-9103, fax (978) 281-9135, e-mail *Allison.Ferreira@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC), with the NEFMC having the administrative lead. Framework Adjustment 2, which became effective on May 1, 2003 (68 FR 22325; April 28, 2003), implemented a target TAC setting method that is based upon the relationship between the 3-year running average of the NMFS fall trawl survey biomass index (3-year average biomass index) and established annual biomass index targets (annual index target). The annual index targets are based on 10 equal increments between the 1999 biomass index (the start of the rebuilding program) and the biomass target (Btarget), which is to be achieved by 2009 according to the rebuilding plan established in the FMP. According to this method, annual target TACs are set based on the ratio of the observed biomass index to the annual index target applied to the monkfish landings for the previous fishing year.

A proposed rule was published in the **Federal Register** on February 24, 2004 (69 FR 8364), with public comment accepted through March 10, 2004. The measures contained in this final rule are unchanged from those published in the proposed rule. A complete discussion of the methods used to establish the target TACs, trip limits, and DAS restrictions for FY 2004 appeared in the preamble to the proposed rule and is not repeated here.

This action establishes annual target TACs of 16,968 mt for the NFMA, and 6,772 mt for the SFMA for FY 2004. In addition, this action adjusts the trip limits for vessels fishing in the SFMA to 550 lb (250 kg) tail weight per DAS for limited access Category A and C vessels, and 450 lb (204 kg) tail weight per DAS for limited access Category B and D vessels. In order to prevent exceeding the target TAC for the SFMA, this action restricts the FY 2004 DAS available for monkfish limited access vessels fishing in the SFMA to 28 DAS, although the remaining 12 DAS could be fished in the NFMA under the regulations applicable to that area.

The target TAC setting process, and the trip limit and DAS adjustment procedures established in Framework 2

cannot be changed by this action. A change to these procedures would require further action on behalf of the NEFMC and MAFMC (Councils) in the form of a framework adjustment, or an amendment to the FMP, both of which are public processes. The regulations governing framework adjustments to the FMP, specified at § 648.96(c)(3), require at least one initial meeting of the Monkfish Oversight Committee (Committee) or one of the Councils, and at least two Council meetings, one at each Council. Because this action follows the annual adjustment procedures for the monkfish fishery, specified under § 648.96(b), such meetings are not required, and, therefore, were not conducted.

Comments and Responses

Three public comments were received on the proposed rule.

Comment 1: One commenter requested that NMFS reduce the target TAC for the NFMA and SFMA to 8,000 mt and 3,000 mt, respectively, and continue to reduce the target TACs for each area by 10 percent in each subsequent year.

Response: Framework 2 specified a target TAC setting method based upon a series of annual biomass index targets that gradually increase to achieve the Btarget established in the FMP. This process, developed by the Council and approved by NMFS, complies with the rebuilding goals of the FMP. To reduce the target TACs below those generated through this target TAC setting method would not allow for harvesting at optimum yield and is not an option authorized under existing regulations specifying the annual adjustment process for setting target TACs.

Comment 2: NMFS received two letters expressing lack of support for the reduction in DAS available for vessels fishing in the SFMA. These letters also contained additional comments relating to the proposed DAS reduction. In one letter, the commenter stated that the estimated economic impact of 27-percent reduction in vessel revenue for vessels from MA and NJ that fish only in the SFMA is unreasonable, given that the management measures for the NFMA have gone unchanged each year. In the second letter, the commenter requested that NMFS utilize information from the 2003 FY, once this information is available, to conduct an additional DAS analysis for the purpose of developing and implementing a separate action that would readjust DAS in the SFMA during the 2004 FY.

Response: In addition to implementing target TAC setting procedures, Framework 2 also

established a trip limit and DAS adjustment process that utilizes information from the most recent complete fishing year at the time the target TACs are determined. For this action, FY 2002 is the most recent fishing year and, thus, represents the best scientific information available. Similar to the target TAC setting procedures, the trip limit and DAS adjustment process established in Framework 2 is codified in the regulations. This process was established in order to prevent the annual target TACs from being exceeded, helping ensure that the stock rebuilding objective of the FMP is achieved. A modification to this regulation is outside the scope of the current rulemaking.

As noted in the preamble to the proposed rule, the 3-year average biomass index for the NFMA (2.03 kg/tow) is 36 percent above the annual index target for 2003 (1.49 kg/tow). Thus, monkfish stock biomass in the NFMA is steadily increasing, and is well above the biomass threshold ($B_{\text{threshold}}$) of 1.25 kg/tow for the NFMA, which is used to determine if the stock is overfished. Furthermore, reductions in Northeast (NE) multispecies DAS allocations that are expected beginning May 1, 2004, under Amendment 13 to the NE Multispecies FMP, will impact the ability of limited access monkfish vessels to target monkfish in the NFMA. Because stock biomass is increasing, and because measures in the NE multispecies fishery restrict the ability of limited access monkfish vessels to target monkfish in the NFMA, NMFS has determined that the implementation of a trip limit or reductions in DAS are unnecessary for the NFMA in order to prevent the target TAC from being exceeded.

Classification

The Administrator, Northeast Region, NMFS (Regional Administrator), determined that this action to establish target TACs, trip limits, and DAS restrictions for the 2004 monkfish fishery is necessary for the conservation and management of the monkfish fishery, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law.

The EA for Framework 2 contained a complete analysis of the target TAC setting method being utilized in this action to establish target TACs, trip limits, and DAS restrictions for FY 2004. In addition, the EA contained an analysis of the impacts of a range of potential target TACs for FY 2004. This

action updates the previous Finding of No Significant Impact (FONSI) statement contained in the EA for Framework 2, and signed on April 21, 2003, with a new FONSI that references updated information on the monkfish fishery, including the target TACs, trip limits, and DAS restrictions for FY 2004. The updated FONSI states that this action does not change the circumstances under which the previous EA was prepared, and that all of the information and analysis contained in the EA for Framework 2 are applicable to this action. Furthermore, the updated FONSI states that this action does not change the determinations made in the EA for Framework 2.

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

Pursuant to 5 U.S.C. 604(a) of the Regulatory Flexibility Act (RFA), NMFS prepared an FRFA for this action, which incorporates the IRFA, any comments on the IRFA and the responses to those comments, and a summary of the analyses prepared in support of this final rule. Copies of the FRFA and IRFA are available from the Regional Administrator (see **ADDRESSES**). The preamble of the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here in its entirety. A summary of the FRFA is provided in the following paragraphs.

A description of the reasons why action by the agency is being taken and the objectives of this action are explained in the preamble of the proposed rule and this final rule and are not repeated here. This action does not contain any reporting, recordkeeping, or other compliance requirements. This action is taken under the authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Public Comments

Three public comments were received on the proposed rule, but only one comment referenced the economic impacts of the proposed measures. This comment is summarized and responded to under Comment 2 in the Comments and Responses section of the preamble of this final rule. No changes to the proposed regulations are necessary as a result of this comment because the target TAC setting process, and the trip limit and DAS adjustment process, are not subject to modification. Thus, the economic impacts of this final rule are unavoidable.

Number of Small Entities Impacted

This action would impact approximately 390 monkfish vessels that fish all or part of the fishing year in the SFMA, based on vessel activity reports for the 2002 FY. All of these vessels are considered small entities under the Small Business Administration's size standards for small fishing businesses (\$3.5 million in gross sales).

Minimizing Economic Impacts on Small Entities

The target TAC setting alternative adopted in Framework 2 to the FMP, and utilized in this action, is less precautionary than the other alternatives considered in Framework 2, but minimizes impacts to small entities to the greatest extent. This target TAC setting method minimizes impacts to small entities because it maximizes benefits to the fishing industry by providing the NEFMC and MAFMC (Councils) with the ability to increase the target TAC in response to an increase in monkfish stock biomass, in the absence of a reliable estimate of fishing mortality (F), but with a cap on that increase.

The target TAC setting method is narrowly prescribed and provides little legal latitude in considering other alternatives or associated management measures. The annual target TAC setting method established in Framework 2 is based on a formula that integrates an annual biomass index target with the 3-year running average of the NMFS fall trawl survey and the monkfish landings for the previous fishing year. Therefore, the setting of target TACs using this method is non-discretionary. Another option, considered but rejected by the Councils in Framework 2, for establishing 2004 target TACs would use current F in relation to the fishing mortality threshold ($F_{\text{threshold}}$). This option was determined to be unreasonable because current estimates of F are too imprecise to set target TACs and make a status determination regarding overfishing. Framework 2 also established a formulaic method for adjusting trip limits and DAS for the SFMA based on the target TACs. Thus, there are no alternatives to the trip limits and DAS restrictions that can be legally implemented for the SFMA in this action.

Based upon available data, NMFS estimated the average economic impact on vessels that fish only in the NFMA, those that fish in both management areas, and those that fish exclusively in the SFMA. According to this analysis, under this final rule, vessels fishing

exclusively in the NFMA will not be affected by reduced trip limits and DAS restrictions proposed for the SFMA. The average impact of this action on vessels that fish in both the NFMA and SFMA was estimated to be less than a 1-percent reduction in net pay to crew or net return to the vessel. This low level of impact suggests that vessels that fish in both management areas predominantly fished in the NFMA, at least during FY 2002. The average impact on vessels that fish exclusively in the SFMA was about an 18-percent reduction in returns to the vessel owner and a 22-percent reduction in net pay to crew. Average impacts by state exhibit substantial variability from no impact on vessels from NC to a reduction in average vessel net return of 27 percent for vessels in MA and NJ. Furthermore, the per-trip average return on monkfish trips is estimated to be reduced by 25 percent as a result of this action. This means that, on average, a monkfish trip fished in the SFMA would produce 25 percent less income toward fixed costs, debt, and owner profit under the FY 2004 trip limits. Similarly, net pay per crew member would be reduced by an average of 22 percent. The economic impacts of this final rule are necessary to ensure the continued rebuilding of the monkfish stock in the SFMA. Based on the most recent 3-year running average biomass index from the NMFS fall trawl survey, the monkfish stock in the SFMA is no longer overfished. However, the current biomass index is 8.9-percent below the annual biomass index target for 2003 established in Framework 2. Therefore, a reduction in the target TAC for the SFMA is required. In addition, a reduction in monkfish trip limits and implementation of DAS restrictions for vessels fishing in the SFMA are required in order to ensure that the reduced target TAC for this area is not exceeded.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is

required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all vessels issued a limited access monkfish permit, and to all Federal dealers issued a monkfish permit. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and are also available at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 1, 2004.

Rebecca Lent,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.92, paragraph (b)(1) is revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) *Limited access monkfish permit holders.*—(i) *General provisions.* All limited access monkfish permit holders shall be allocated 40 monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless modified by paragraph (b)(1)(ii) of this section according to the provisions specified at § 648.96(b)(3). Limited access NE

multispecies and limited access sea scallop permit holders who also possess a valid limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with their monkfish DAS, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

(ii) *FY 2004 DAS restrictions for vessels fishing in the SFMA.* For the 2004 fishing year, limited access monkfish vessels may fish only 28 of their 40 monkfish DAS allocation in the SFMA. If a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS will presume that any monkfish DAS used was fished in the SFMA.

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■ 3. In § 648.94, paragraphs (b)(2) (i) and (ii) are revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(2) * * *

(i) *Category A and C vessels.* Category A and C vessels fishing under the monkfish DAS program in the SFMA may land up to 550 lb (250 kg) tail-weight or 1,826 lb (828 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32), unless modified pursuant to § 648.96(b)(2)(ii).

(ii) *Category B and D vessels.* Category B and D vessels fishing under the monkfish DAS program in the SFMA may land up to 450 lb (204 kg) tail-weight or 1,494 lb (678 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32), unless modified pursuant to § 648.96(b)(2)(ii).

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