

**Regulatory Impact Review &  
Initial Regulatory Flexibility Analysis for a  
Proposed Rule to Implement Target Total Allowable Catch  
Levels (TACs) for the Monkfish Fishery for the 2004 Fishing Year**

## **1.0 Regulatory Impact Review (RIR) (E.O. 12866)**

This section contains the required elements for determination of whether the proposed action is significant under E.O. 12866.

### **1.1 Description of the Management Objectives**

The goals and objectives of the Monkfish Fishery Management Plan (FMP) as stated in Section 3.4 of the FMP are:

1. To end and prevent overfishing; rebuilding and maintain 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,
4. To allow the traditional incidental catch of monkfish to occur.

The proposed action is consistent with, and does not modify those goals and objectives.

### **1.2 Description of the Fishery**

The monkfish fishery is unique in that it is prosecuted differently in the North (Gulf of Maine (GOM) and Georges Bank (GB) Regulated Mesh Areas (RMAs)), than in the South (Southern New England (SNE) and Mid-Atlantic (MA) RMAs). For this reason, as well as biological reasons, the fishery is separated into two management units, the Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA). In the NFMA, the fishery is primarily prosecuted with otter trawl gear (76 percent of total monkfish landings during fishing year (FY) 2001), while the fishery is primarily prosecuted with gillnet gear in the SFMA (60 percent of total monkfish landings during FY 2001).

Section 6.4 of the FMP contains a detailed description of the monkfish fishery. Furthermore, the 2001 and 2002 SAFE Reports, which are available from the New England Fishery Management Council (Council), contain an updated description of the fishery using the best and most current data available.

### **1.3 Statement of the Problem**

Framework Adjustment 2 to the FMP, which became effective on May 1, 2003 (68 FR 22325), implemented a target TAC setting method that is based upon the relationship between the 3-year running average of the National Marine Fisheries Service's (NOAA Fisheries) fall trawl survey biomass index and established annual biomass index targets. The annual index targets are based on 10 equal increments between the 1999 biomass index (the start of the rebuilding program) and

the  $B_{\text{target}}$ , which is to be achieved by 2009 according the rebuilding plan established in the FMP. According to this target TAC setting 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.

In accordance with the annual target TAC setting method established in Framework 2, the Monkfish Monitoring Committee (MFMC) reviewed the NOAA Fisheries fall trawl survey biomass indices and monkfish landings for FY 2002, and calculated the TACs for FY 2004. Based upon this method, the target TACs recommended by the MFMC are 16,968 mt for the NFMA, and 6,772 mt for the SFMA. The target TAC being recommended for the NFMA represents a 4-percent decrease from the target TAC for FY 2003 while the target TAC for the SFMA represents nearly a 34-percent decrease from the target TAC for FY 2003.

The 3-year running average biomass index for the NFMA is 36 percent above the annual index target. As a result, the target TAC being recommended for the NFMA is being set at 18 percent above the monkfish landings for FY 2002 in accordance with the target TAC setting procedures established in Framework 2. Thus, although the proposed 2004 target TAC for the NFMA is a decrease from the target TAC in place for FY 2003, it is a substantial increase from the target TAC for FY 2002, which was 11,674 mt. Furthermore, regulations currently in place for the Northeast (NE) multispecies fishery have reduced multispecies DAS allocations, which directly impacts the ability of limited access vessels to fish for monkfish in the NFMA. In fact, monkfish landings for May through August 2003 were at 21 percent of the target 2003 TAC for the NFMA. Additional reductions in multispecies DAS allocations are expected beginning May 1, 2004, under Amendment 13 to the NE Multispecies FMP. Under existing management measures (40 DAS and no trip limit), it is unlikely that vessels in the NFMA would exceed the proposed 2004 target TAC for this area. Therefore, this action does not propose any adjustments in DAS or implementation of a trip limit for the NFMA since such changes are unnecessary in order to achieve the proposed target TAC for FY 2004.

Unlike the NFMA, the decrease in target TAC proposed for the SFMA will require both a reduction in the trip limit, and a reduction in the DAS available for vessels fishing in the SFMA. A trip limit analysis was conducted in Framework 2 for a series of possible target TACs that could be in effect for the SFMA for FY 2004. According to this analysis, a target TAC of 6,500 mt would result in trip limits of 300 lb per DAS for limited access category A and C vessels, and 250 lb per DAS for limited access category B and D vessels.

In Framework 2, the Councils elected to fix the trip limits at 550 lb per DAS for Category A and C vessels, and 450 lb per DAS for Category B and D vessels, and adjust the annual DAS available for vessels fishing in the SFMA, if the annual target TAC for this area was less than a level calculated to produce those trip limits with a baseline 40 DAS allocation, which is a target TAC of approximately 8,000 mt. The Councils chose this action because if the target TAC drops below that level, which is approximately the same target TAC established for FY 2002, the resulting trip limits would not be significantly different than the incidental catch limits on some

vessels, essentially eliminating the directed monkfish fishery. Thus, an annual target TAC of less than 8,000 mt would result in trip limits that are not economically feasible for vessels participating in the directed monkfish fishery.

A DAS analysis conducted in accordance with the monkfish regulations at § 648.96(b)(2)(iii), concluded that, under a target TAC of 6,772 mt for the SFMA, limited access Category A and C vessels should be authorized to fish a maximum of 27 DAS in the SFMA, and limited access Category B and D vessels should be authorized to fish a maximum of 29 DAS in the SFMA. Because the calculated maximum DAS are similar for each limited access category group, NOAA Fisheries is recommending that all limited access vessels fishing in the SFMA be authorized to fish a maximum of 28 DAS for the 2004 fishing year, the average maximum DAS for the two limited access groups. Thus, all limited access vessels would have a total allocation of 40 monkfish DAS, of which only 28 DAS could be fished in the SFMA.

This action would establish annual target TACs of 16,968 mt for the NFMA, and 6,772 mt for the SFMA. In addition, this action would adjust the trip limits for vessels fishing in the SFMA to be 550 lb tail weight per DAS for limited access Category A and C vessels, and 450 lb 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 would limit the DAS available to limited access vessels for 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. NOAA Fisheries intends to monitor DAS usage by management area based on whether a vessel holds a valid Letter of Authorization (LOA) to fish for monkfish exclusively in the NFMA. Under the monkfish regulations at 50 CFR 648.93(f), vessels fishing on a monkfish, multispecies, or scallop DAS under the less restrictive measures of the NFMA, must declare into the NFMA by obtaining a LOA from the Regional Administrator. A vessel that does not possess this LOA it is presumed to have fished in SFMA. Thus, by integrating the DAS monitoring program with the monkfish LOA tracking system, NOAA Fisheries will be able to monitor the number of DAS a vessel is fishing in each management area.

#### **1.4 Description of the Alternatives**

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 NOAA Fisheries fall trawl survey and the monkfish landings for the previous fishing year. Therefore, the target TACs resulting from the application of this method are non-negotiable. As a result, there are no alternatives to the proposed action to establish target TACs of 16,968 mt for the NFMA and 6,772 for the SFMA. Furthermore, Framework 2 also established an formulaic method for adjusting trip limits and DAS for the SFMA. Thus, there are no alternatives to the proposed trip limits of 550 lb per DAS for limited access Category A and C vessels, and 450 lb per DAS for limited access Category B and D vessels, and the calculated DAS limitation of 28 DAS available to limited access vessels for fishing the SFMA.

## 1.5 Determination of significance under E.O. 12866

NOAA Fisheries Guidelines provide criteria to be used to evaluate whether a proposed action is significant. A “significant regulatory action” means any regulatory action that is likely to result in a rule that may:

*1. Have an annual effect on the economy of \$100 million or more, or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.*

This action will not have an annual effect on the economy of \$100 million, nor adversely effect in a material way the economy, a sector of the economy, productivity, competition, the environment, public health or safety, or State, local, tribal governments or communities. During fishing years 1998 through 2000, gross monkfish revenues averaged approximately \$43 million per fishing year. Monkfish revenues were \$44.1 million in fishing year 2001 but dropped to \$36.6 million in fishing year 2002. Assuming the entire FY2003 TAC were to be taken the total value of monkfish landings would be \$46.7 million at 2002 average prices. Similarly, the value of the fishing year 2004 TAC would be \$39.7 million. Thus, the impact on the National economy would be \$7.1 million in forgone revenues from monkfish landings relative to fishing year 2004. However, note that the probable 2004 revenues would be higher than that of fishing year 2002 and only about \$4 million below pre-FMP levels .

Monkfish dealers likely would be impacted by the proposed reduction in TAC for the SFMA due to the lack of availability of product. However, monkfish dealers could purchase monkfish landed in the NFMA in order to offset the lack TAC available in the SFMA, but at a higher cost to the dealer.

*2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.*

The proposed action does not create an inconsistency or otherwise interfere with an action taken or planned by another agency. The activity proposed to be allowed under this action involves commercial fishing for monkfish in Federal waters of the EEZ. NOAA Fisheries is the sole agency responsible fore regulating this activity. Therefore, there is no interference with actions taken by another agency. Furthermore, this action would create no inconsistencies in the management and regulation of commercial fisheries in the Northeast.

*3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.*

The proposed action would establish target monkfish TACs for the 2004 fishing year, and adjust the trip limits and DAS allocation for vessels fishing in the SFMA. This action is unrelated to any entitlements, grants, user fees, or loan programs, and, therefore, cannot be considered significant under the third criterion specified in E.O. 12966.

*4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.*

The proposed action is being taken pursuant to the mandates of the Sustainable Fisheries Act to end overfishing, rebuild the stock to MSY in 10 years, and achieve optimum yield from the fishery using the best scientific information available. This action uses biomass indices from the most recent NOAA Fisheries Fall Trawl Survey (Fall 2003) to establish target TACs for the 2004 fishing year based on a streamlined target TAC setting process that was established in Framework 2. Therefore, the proposed action would not be considered significant under the fourth criterion specified in E.O. 12866.

Because none of these criteria apply, NOAA Fisheries has determined that the proposed action in the monkfish fishery to establish target TACs, and adjust the trip limits and DAS allocation for vessels fishing in the SMFA for the 2004 fishing year, is not significant for the purpose of E.O. 12866.

## **2.0 Initial Regulatory Flexibility Analysis (IRFA)**

The following sections contain analyses of the effect of the proposed action on small entities in accordance with Section 603(b) of the Regulatory Flexibility Act.

### **2.1 Reasons for Considering the Action**

The FMP requires that the status of the monkfish resource be reviewed on an annual basis. In addition, the measures contained in Framework 2 established an annual target TAC setting method that is based on the most recent 3-year running average of the NOAA Fisheries fall trawl survey biomass index as compared to an established annual biomass index target. This action utilizes the target TAC setting method implemented in Framework 2 to establish target TACs for FY 2004, as required under the regulations at § 648.96(b)(1).

Framework 2 also established a method for adjusting trip limits and DAS for vessels fishing in the SFMA to achieve the target TAC for that area. This action also adjusts the trip limits and DAS for vessels fishing in the SFMA based upon the method established in Framework 2, and implemented under the regulations at § 648.96(b)(2) and (b)(3).

## **2.2 Objectives and legal basis for the action**

The regulations implementing the FMP, found at 50 CFR Part 648, authorize the Council to adjust the management measures as needed in order to achieve the goals of the FMP. Framework 2 adjusted FMP management measures by establishing a streamlined process for setting annual target TACs, and for adjusting trip limits and DAS allocations as necessary to achieve those target TACs. The objective of this action is to achieve the goals of the FMP through the application of the target TAC setting method established in Framework 2 for the 2004 fishing year. Thus, the proposed action is consistent with the goals of the FMP and its implementing regulations.

## **2.3 Description and number of small entities to which the rule applies**

All of the entities (fishing vessels) affected by this action are considered small entities under the SBA size standards for small fishing businesses (\$3.5 million in gross sales). There are approximately 740 limited access monkfish permit holders (including vessels in a confirmation of permit history) and, as of January 14, 2004, approximately 1,970 vessels that hold an open access Category E permit. This action would affect only limited access monkfish vessels that fish for monkfish in the SFMA.

Based on activity reports for the 2002 fishing year (the most recent fishing year for which complete information is available) there were a total 532 limited access permit holders that participated in the monkfish fishery. Of these, 142 fished for monkfish exclusively in the Northern Fishery Management Area (NFMA) and 148 fished for monkfish in only the Southern Fishery Management Area (SFMA). The remaining 242 vessels fished for monkfish in both management areas. Thus, the proposed measures would affect at least the 390 vessels that fished for monkfish for at least part of the time in the SFMA, but would be likely to have greatest affect on the 148 vessels that fished for monkfish exclusively in the SFMA.

## **2.4 Reporting, recordkeeping and other compliance requirements**

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. However, this action would re-enforce the fact that if a vessel wants to fish in the NFMA under the less restrictive measures of that area, it must obtain a LOA from the Regional Administrator. If a vessel does not possess a monkfish LOA, then it is assumed to be fishing in the SFMA.

## **2.5 Duplication, overlap or conflict with other Federal rules**

The proposed rule does not duplicate, overlap or conflict with other Federal rules.

## **2.6 Economic impacts on small entities resulting from the proposed action**

The combined TAC for both monkfish management areas would be reduced by approximately 15 percent compared to fishing year 2003. However, the TAC for the SFMA would be reduced by nearly 34 percent. Monkfish trip limits in the SFMA would also be reduced by more than half, and allowable DAS that may be fished in the SFMA would be reduced by 28 percent. Thus, the impact of the proposed measures would have differential impacts on participating vessels depending on the management area in which they fish.

In Framework 2 the potential economic impacts of a range of potential FY2004 trip limits were evaluated where all potential impacts were evaluated relative to a FY2002 baseline. Relative to this baseline the FY2004 TAC for the SFMA would represent a 22 percent reduction in median vessel gross revenues when, in fact, the SFMA TAC would decline by 34 percent. However, the Framework 2 analysis did not include the potential additional impacts of a DAS reduction at TAC levels below 8,000 MT. Therefore, the following revises the Framework 2 analysis to evaluate the short term impacts of the TAC reduction from FY2003 to FY2004 while incorporating the proposed trip limits and DAS limits in the SFMA.

Estimation of relative economic impacts was accomplished using a two-step procedure. In the first step the average reduction in vessel returns net of operating costs and crew payments on trips where monkfish trips (defined as being trips in the SFMA using large mesh where monkfish revenue was at least 50 percent of trip revenue) was estimated. In the second step, this trip average was applied to observed trips in FY2002. Average DAS losses based on FY2002 call-in data were also included in the second step. A more detailed description of these two steps follows.

### Step 1, Estimation of per-Trip Returns

The impact of trip limits are amenable to analysis when going from a higher to a lower trip limit. While FY2003 trip limits were higher than the proposed FY2004 trip limits the 2003 fishing year is not yet complete. This means that evaluation of the lower FY2004 trip limits still requires a return to a time period where trip limits had not been implemented. The Framework 2 analysis used data from 1998-2000 for monkfish trips taken in the SFMA where large mesh nets were used. These data were used again for the present analysis.

The economic effect of trip limits were evaluated based on a comparison of the expected return for alternative trip-taking strategies. Specifically, a vessel may abandon a trip if the trip limit causes earnings to fall below zero (i.e. revenues would not cover operating costs); a vessel may continue to fish while discarding any monkfish above the trip limit; or a vessel may fish up to the trip limit and then return to port. In effect, assuming a trip is taken vessels may choose to continue fishing while discarding monkfish above the trip limit as long as revenue earned from species other than monkfish is greater than the cost of fishing. By contrast, trips where relatively small amounts of revenue earned from other species may be uneconomical or would be

discontinued once the trip limit has been reached since the cost of continued fishing would exceed the additional income.

The relative change in net return to the vessel was estimated by calculating the average per-trip returns to the vessel owner for the FY2003 trip limits and again for the proposed FY2004 trip limits. The change in average return was then calculated as the percent change. Operating costs were assigned to different gears as follows: gillnet vessels less than 40 ft (\$50 per day), gillnet vessels 40 ft and above (\$100 per day), otter trawl vessels less than 50 ft (\$270 per day), otter trawl vessels 50 to 70 ft (\$400 per day) and otter trawl vessels greater than 70 ft (\$800 per day). Data sources for gillnet gear data came from trip cost data collected on observer logs while trawl vessel cost data were obtained from NMFS-sponsored surveys conducted by the University of Rhode Island. For purposes of analysis, return to the vessel were calculated by applying a standard 60/40 lay system where 40 percent of gross revenues goes to the vessel and 60 percent of the gross is shared among crew. Note that the crew pays for the operating expenses for the trip so the net to crew is the difference between the 60 percent share and trip expenses. Net pay per crew member is the total net pay divided by number of crew.

Based on the trip limit model, the per trip average return on monkfish trips would be reduced by 25 percent (see Table 1 for results by home port state). This means that on average, a monkfish trip taken in the SFMA would produce 25 percent less income toward fixed costs, debt, and owner profit under the proposed FY2004 trip limits. Similarly, net pay per crew member would be reduced by an average of 22 percent (see Table 2 for results by home port state).

Table 1. Average Per Trip Return to Vessels by Home Port State (60/40 Lay System).

Home Port State	Number of Trips	Average Vessel Return with FY2003 Trip Limits	Average Vessel Return with FY2004 Trip Limits	Percent Change in Average Vessel Return
CT	157	993	774	-22.1%
DE	130	1040	691	-33.6%
MA	1654	1253	896	-28.5%
MD	14	837	653	-21.9%
ME	96	1317	994	-24.5%
NC	58	911	720	-21.0%
NH	147	919	651	-29.1%
NJ	2237	1097	835	-23.9%
NY	807	600	523	-12.8%
RI	841	1227	884	-27.9%
VA	66	890	714	-19.8%

Table 2. Average Per Trip Net Pay per Crew Member by Home Port State (60/40 Lay System)

Home Port State	Average Net Pay per Crew Member with FY2004 Trip Limits	Average Net Pay per Crew Member with FY2003 Trip Limits	Percent Change in Average Payment per Crew Member
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CT	640	507	-20.8%
DE	557	379	-32.0%
MA	593	433	-27.0%
MD	392	303	-22.6%
ME	844	669	-20.7%
NC	480	388	-19.2%
NH	603	451	-25.3%
NJ	652	517	-20.7%
NY	401	357	-11.1%
RI	626	479	-23.4%
VA	495	409	-17.4%

## Step 2, Estimation of Economic Impacts of Proposed Measures

Observed fishing year 2002 data were used to estimate impacts on participating limited access monkfish permit holders in the following manner. Activity data based on vessel trip reports for all trips taken by limited access monkfish permit holders that landed at least one pound of monkfish were identified. These data permit estimation of economic impacts on a vessel's entire fishing business including trips taken where monkfish were targeted and trips where no monkfish were landed or may have been landed in incidental quantities. The total value earned on each trip was estimated by applying monthly average prices by species from dealer data to the reported kept pounds in the VTR. The 60/40 lay system was applied to each trip to calculate returns to the vessel and net crew payments. Each trip was then evaluated to determine whether large mesh was used and monkfish was also landed in quantities that would have exceeded incidental catch limits. Returns to vessel owners and crew on trips that were determined to be a monkfish trip taken in the SFMA were adjusted based on the average change in returns calculated in Step 1. Specifically, for qualifying trips, FY2002 returns to the vessel were reduced by 25 percent and net pay to crew was reduced by 22 percent.

Each vessel in the FY2002 data set was subdivided into three categories depending on whether the vessel fished for monkfish exclusively in the SFMA, exclusively in the NFMA, or fished for monkfish at least once in both management areas. Since no changes to either trip limits or DAS would be implemented for the NFMA vessels that fished exclusively in the NFMA would not be affected by the proposed measures. Vessels that fished in both management areas were assumed to be affected by the SFMA trip limits while they fished in the SFMA but would not lose any opportunities to fish monkfish since they would be likely to switch to the NFMA once the limit on DAS in the SFMA was reached. However, while vessels that fished exclusively in the SFMA would still be able to switch to the NFMA by virtue of a strong fidelity to the SFMA, it was assumed that they would not be likely to do so. This assumption means that vessels with a strong fidelity to the SFMA would be affected by both the trip limit change and could be constrained by the DAS.

To account for the reduction of DAS that may be used in the SFMA the average reduction in DAS used by vessels that fished exclusively in the SFMA was estimated. Based on call-in records approximately 60 percent of vessels that landed monkfish exclusively from the SFMA took no monkfish-only trips. Of the remaining 40 percent of vessels that did take at least one

monkfish-only trip the average difference between the observed call-in DAS and the proposed allowable DAS in the SFMA was 5.5 DAS. This means that the average vessel fishing for monkfish in the SFMA would lose 5.5 days of fishing over and above the losses associated with the reduced trip limits. To account for these DAS losses, the average return on monkfish DAS was multiplied by 5.5 and deducted from the total net return for the year. That is, total net return to each vessel as well as net crew payments was summed for all trips (adjusted for trip limits). For vessels fishing for monkfish exclusively in the SFMA total net return was further reduced by the lost value associated with the reduced DAS allowance.

As noted above, vessels fishing exclusively in the NFMA would not be affected by the proposed SFMA measures. The average impact on vessels that fish in both areas 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 may fish in both management areas predominantly fished in the NFMA at least during fishing year 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 North Carolina to a reduction in average vessel net return of 27 percent for vessels in Massachusetts and New Jersey (Table 3).

Table 3. Relative Change in Vessel Net Return and Change in Average Net Pay to Crew for Vessels Landing Monkfish Exclusively from the SFMA

Home Port State*	Number of Vessels	Average Reduction in Net Pay to Crew	Average Reduction in Return to Vessel Owner
MA	22	-32.2%	-27.1%
NC	10	0.0%	0.0%
NJ	59	-29.4%	-27.8%
NY	20	-14.4%	-10.9%
RI	27	-22.8%	-17.8%
VA	8	-5.6%	-3.1%

\* Data for 1 CT vessel and 1 DE vessel not reported due to confidentiality.