

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Mouse, Preble's meadow jumping.	<i>Zapus hudsonius preblei</i> .	U.S.A. (CO, WY) ....	.....do .....	T	636	17.95(a)	17.40(l)
*	*	*	*	*	*	*	*

**§ 17.40 [Amended]**

3. Amend paragraph (l) of § 17.40 by removing paragraph (l)(4) and redesignating paragraph (l)(5) as paragraph (l)(4).

Dated: January 21, 2004.

**Julie MacDonald,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04-4025 Filed 2-19-04; 4:21 pm]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No.; 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:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes 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). The target TACs for FY 2004, based upon the target TAC setting method, would be 16,968 mt for the Northern Fishery Management Area (NFMA), and 6,772 mt for the SFMA. In accordance with the trip limit and DAS adjustment methods established in Framework 2, this action would adjust the trip limits for vessels fishing in the SFMA to be 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 would also restrict the FY 2004 DAS available for monkfish limited access vessels fishing in the SFMA to 28 DAS.

**DATES:** Comments must be received on or before March 10, 2004.

**ADDRESSES:** Comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator (RA), Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on 2004 Monkfish TACs." Comments may also be submitted via facsimile (fax) to 978-281-9135. Comments may also be submitted via e-mail to the following address: [monkfish89@noaa.gov](mailto:monkfish89@noaa.gov).

Copies of the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available upon request from the RA at the above address. 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 (NEFMC), 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](mailto:Allison.Ferreira@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The monkfish fishery is jointly managed by the 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 ( $B_{target}$ ), which is to be achieved by 2009 according to 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 procedures established in Framework 2, and implemented in the regulations at 50 CFR 648.96(b)(1), the Monkfish Monitoring Committee (MFMC) reviewed the NMFS fall trawl survey biomass indices and monkfish landings for FY 2002, and calculated the target TACs for FY 2004. Based on this information, the 2004 target TACs would be set at 16,698 mt for the NFMA, and 6,772 mt for the SFMA. For the NFMA, the 3-year average biomass index of 2.03 kg/tow is 36 percent above the annual index target of 1.49 kg/tow for 2003. The target TAC setting procedures established in Framework 2 state that, if the 3-year average biomass index is above the index target, the target TAC shall be set equivalent to the previous year's landings plus one-half the percentage difference between the 3-year average biomass index and the annual index target, but no more than 20 percent above the previous year's landings, if fishing mortality cannot be determined. Consequently, the target TAC of 16,968 mt that is being recommended for the NFMA is 18 percent above the monkfish landings for FY 2002, which is one-half of the 36-percent difference between the 3-year biomass index and the annual index target for 2003. This target TAC represents a 4-percent decrease from the target TAC for FY 2003. Although the proposed 2004 target TAC for the NFMA is a decrease from the target TAC 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 NE multispecies DAS allocations, which directly impacts the ability of limited access monkfish vessels to fish in the NFMA. In fact, monkfish landings for May through August 2003 were 21 percent of the target 2003 TAC for the NFMA. Additional reductions in NE 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.

For the SFMA, the 3-year average biomass index of 0.93 kg/tow is 8.9 percent below the annual index target of 1.02 kg/tow. The regulations at § 648(b)(1)(i)(A) require that, in this circumstance, the 2004 TAC for the SFMA be set proportionally below the previous year's (FY 2002) landings. This results in a target TAC of 6,772 mt for the SFMA. Unlike the NFMA, the proposed decrease in target TAC for the SFMA would require both a reduction in the trip limits and a reduction in the monkfish DAS available for limited access vessels fishing in the SFMA. Framework 2 included a provision that states, if the target TAC for the SFMA is below a target TAC that would result in trip limits below 550 lb (250 kg) tail weight per DAS for Category A and C vessels, and 450 lb (204 kg) tail weight per DAS for Category B and D vessels (approximately 8,000 mt), then the trip limits would be fixed at those levels and the DAS available for vessels fishing in the SFMA would be reduced based upon an established method, defined in the regulations at § 648.96(b)(2)(iii). This provision was included to address the concern that, if the target TAC dropped below the 8,000-mt level, which is approximately the same target TAC established for FY 2002, the resulting trip limits would be comparable to 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, NMFS 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, under this proposed rule, all limited access vessels would have a total allocation of 40 monkfish DAS, of which only 28 DAS could be fished in the SFMA.

NMFS 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 § 648.93(f), vessels fishing on a monkfish, NE 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 is presumed to have fished in the SFMA.

The EA for Framework 2 contained a complete analysis of the target TAC setting method being utilized in this action to established target TACs, trip limits and DAS 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 being proposed 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.

#### Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS has prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA prepared for this action follows NMFS's "Guidelines for Economic Analysis of Fishery Management Actions" (NMFS's

guidelines). A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY. A summary of the analysis follows:

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 a formulaic method for adjusting trip limits and DAS for the SFMA that is based on the distribution of monkfish landings and DAS used by limited access vessels. 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.

The only other option for establishing 2004 target TACs would be to forgo using the target TAC setting method established in Framework 2, and establish target TACs based on current fishing mortality (F) in relation to the fishing mortality threshold (F<sub>threshold</sub>). This option is not reasonable since current estimates of F are too imprecise to set target TACs and make a status determination regarding overfishing. For these reasons, this option (the status quo alternative) was rejected by the Councils in the development of Framework 2.

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 proposed action would affect only limited access monkfish vessels that fish in the SFMA. There are approximately 740 limited access monkfish permit holders, including vessels in a confirmation of permit history. Based on activity reports for the FY 2002 (the most recent fishing year for which information is available), there were a total of 532 limited access permit holders that participated in the monkfish fishery. Of these, 148 vessels

fished for monkfish exclusively in the SFMA, and 242 vessels fished for monkfish in both management areas. Therefore, the proposed measures could effect at least 390 limited access monkfish vessels, but would likely have the greatest effect on the 148 vessels that fished for monkfish exclusively in the SFMA.

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. As a result, further analysis was conducted 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.

The analysis indicates that, based on a trip limit model, the per trip average return on monkfish trips would be reduced by 25 percent. 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. In terms of impacts by state, vessels from Delaware and New Hampshire would be most impacted, experiencing reductions in average vessel returns of 33 percent and 29 percent, respectively. Vessels from Massachusetts and Rhode Island would experience similar reductions in average vessel returns, approximately 28 percent. New York vessels would be least impacted, experiencing losses in average vessel returns of approximately 13 percent.

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, were 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.

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 can 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 North Carolina, to a reduction in average vessel net return of 27 percent for vessels in Massachusetts and New Jersey.

This proposed rule does not duplicate, overlap or conflict with other Federal rules, and does not contain new reporting or recordkeeping requirements.

A copy of this analysis is available from NMFS (see **ADDRESSES**).

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 17, 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 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 § 648.92, 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 multispecies and limited access scallop permit holders who also possess a valid limited access monkfish permit must use a multispecies or scallop DAS concurrently with their monkfish DAS, except as provided in paragraph (b)(2) of this section.

(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.

\* \* \* \* \*

3. In § 648.94, paragraph (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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[FR Doc. 04-3852 Filed 2-23-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[I.D. 021104B]

#### Fisheries of the Northeastern United States; Essential Fish Habitat (EFH) Components of Fishery Management Plans (FMPs) for Northeast Multispecies, Atlantic Sea Scallop, Monkfish, Herring, Skates, Atlantic Salmon and Red Crab Fisheries 5-year Review; Scoping Process

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

**ACTION:** Notice of intent to prepare a programmatic Environmental Impact Statement (EIS); notice of initiation of scoping process; request for comments.

**SUMMARY:** The New England Fishery Management Council (Council) in cooperation with NMFS announces its intent to prepare a programmatic EIS and Omnibus Amendments to the FMPs for Northeast Multispecies, Atlantic Sea Scallop, Monkfish, Herring, Skates, Atlantic Salmon and Red Crab. The Amendments (Omnibus) will review the EFH components of all the Council's FMPs, identify and consider new Habitat Areas of Particular Concern (HAPCs), consider Dedicated Habitat Research Areas (DHRA), integrate alternatives to minimize any adverse effects of fishing on EFH for all species managed by the Council, and analyze the impacts of any proposed management measures. The Council is also formally initiating a public process to determine the scope of alternatives to be addressed in the Omnibus and EIS. The purpose of this notification is to alert the interested public of the commencement of the scoping process and to provide for public participation

in compliance with environmental documentation requirements.

**DATES:** The Council will discuss and take scoping comments at public meetings in March 2004. For specific dates and times of the scoping meetings, see **SUPPLEMENTARY INFORMATION**. E-mail and written scoping comments must be received on or before 5 pm EST, April 30, 2004.

**ADDRESSES:** The Council will take scoping comments at public meetings in Maine, Massachusetts, Connecticut and North Carolina. For specific locations, see **SUPPLEMENTARY INFORMATION**. The mailing address for submitting paper, disk, or CD-ROM comments and for requests for copies of the scoping document and other information is: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465-0492. Written comments should be marked "Comments on Omnibus EFH Amendment". Comments may also be sent via facsimile (fax) to (978) 465-3116. Comments on this notice of intent may be submitted by e-mail. The mailbox address for providing e-mail comments is [comments@nefmc.org](mailto:comments@nefmc.org). For e-mail comments "Comments on Omnibus EFH Amendment" should be used in the subject line. The scoping document is accessible electronically via the Internet at <http://www.nefmc.org>.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Fishery Conservation and Management Act of 1976, since renamed the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), established eight Regional Fishery Management Councils (Councils) that manage the living marine resources within the U.S. Exclusive Economic Zone (between 3 and 200 nautical miles offshore). The 18-member New England Fishery Management Council's authority extends from Maine to Connecticut and, in some cases, to the Mid-Atlantic because of the range of the managed species. The 1996 amendments to the Magnuson-Stevens Act, known as the Sustainable Fisheries Act (SFA), changed the focus of the Magnuson-Stevens Act by emphasizing the importance of habitat protection to healthy fisheries and by strengthening the ability of NMFS and the Councils to better protect, conserve, and enhance

the habitat for all species managed by the Council. This habitat is termed EFH, and is broadly defined to include "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity."

The Council's Omnibus EFH Amendment of 1998 recognized that all species are dependent on the quantity and quality of their habitat and, accordingly, the Council approved a policy to promote and encourage the conservation, restoration, and enhancement of the habitat upon which living marine resources depend. This policy is supported by four policy objectives, which are to:

1. Maintain and enhance the current quantity and quality of habitats supporting harvested species, including their prey base;
2. Restore and rehabilitate fish habitats that have already been degraded;
3. Create and develop fish habitats where increased availability of fishery resources will benefit society; and
4. Modify fishing methods and create incentives to reduce the impacts on habitat associated with fishing.

These objectives are based on ensuring the sustainability of harvested species and optimizing the societal benefits of our marine resources. The Council assumed an active role in the protection and enhancement of habitats important to marine and anadromous fish. In support of the Council's habitat policy, the management objectives of the Omnibus EFH Amendment of 1998 were:

1. To the maximum extent possible, to identify and describe all EFH for those species of finfish and mollusks managed by the Council;
2. To identify all major threats (fishing and non-fishing related) to the EFH of those species managed by the Council; and
3. To identify existing and potential mechanisms to protect, conserve and enhance the EFH of those species managed by the Council, to the extent practicable.

The purpose of the Omnibus EFH Amendment of 1998 was to identify and describe the EFH for all species managed by the Council to better protect, conserve, and enhance this habitat. This was done through the following FMP amendments: Northeast Multispecies (Amendment 11), Atlantic Sea Scallops (Amendment 9), Atlantic Salmon (Amendment 1), and Atlantic Herring (added to FMP later). The 1998 Omnibus EFH Amendment also identified the major threats to EFH from both fishing and non-fishing related activities, as well as conservation and