DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020329075–2075–01; I.D. 031902E]

RIN 0648–AP11

Fisheries of the Northeastern United States; Monkfish Fishery; Framework Adjustment 1

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures contained in Framework Adjustment 1 to the Monkfish Fishery Management Plan (FMP). These measures would delay for 1 year the default management measure contained in the FMP for the fishing year May, 2002– April, 2003 (Year 4), and establish management area total allowable catch (TAC) targets for Year 4 at the level of monkfish landings in Year 2. The framework would also adjust the monkfish trip limits in the Southern Fishery Management Area (SFMA) to achieve the proposed TAC while considering the effect of a Federal court order vacating differential gear-based trip limits for trawl and gillnet vessels. This proposed rule would also correct and clarify the regulatory language related to the monkfish area declaration procedures to make the procedures consistent with the intent of the FMP.

DATES: Public comments must be received on or before April 19, 2002.

ADDRESSES: Comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments on Monkfish Framework 1.'' Comments may also be submitted via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of Framework Adjustment 1 to the Monkfish FMP, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA are also accessible via the Internet at *http://www.nero.nmfs.gov*.

Written comments regarding the approved collection-of-information requirements should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Management Specialist, (978) 281-9103, fax (978) 281–9135, e-mail Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION: The monkfish fishery is jointly managed by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC)(Councils), with the NEFMC having the administrative lead. The intent of the management program established by the monkfish FMP is to eliminate overfishing by May 2002 and rebuild the stock by 2009. In order to ensure the elimination of overfishing by May 2002, current regulations specify that restrictive measures become effective for Year 4 of the management program (May 1, 2002 - April 30, 2003) unless a 3-year review of the stock status indicates that these restrictive measures are not necessary. The Year 4 default measures would eliminate the directed monkfish fishery by allocating zero monkfish days-at-sea (DAS) and by allowing only incidental landings of monkfish. Instead of the default measures, this proposed rule, if adopted, would implement the following measures: (1) A 1-year delay of the default management measures contained in the FMP for the fishing year May, 2002 to April, 2003 (Year 4); (2) a revision of management area target TACs for Year 4 to be equivalent to the level of landings in Year 2; and (3) an adjustment of trawl and non-trawl trip limits in the SFMA to achieve the TACs, while considering the impacts of a Federal court order vacating differential gear-based trip limits for trawl and gillnet vessels.

The Monkfish Monitoring Committee (MFMC) of the NEFMC, the NEFMC, and the MAFMC evaluated biological reference points and the effectiveness of management measures to stop overfishing and to allow for rebuilding by 2009. This review relied on information from the 31st Stock Assessment Workshop (SAW 31, June 2001) and on landings and stock survey information. The MFMC noted that SAW 31 determined that the fishing mortality rate (F) reference points on which the default TACs are based are no longer reliable. Therefore, the MFMC could not develop recommendations for alternative management measures. The MFMC noted that updated resource survey indices indicated that stock abundance could have increas ed in the Northern Fishery Management Area (NFMA) and stabilized in the SFMA.

The Councils considered this information and the results of the updated stock assessment released in January 2002 (SAW 34). SAW 34 investigated several methods for assessing stock status and provided suggestions for improved biological reference points based on yield per recruit analyses. Based on the results of the current and previous assessments, an F threshold ($F_{threshold}$) of F_{max}=0.2 was recommended by the Stock Assessment Review Committee (SARC) for defining overfishing.

The assessment produced a range of fishing mortality estimates for calendar year 2000, which varied depending on the method used for calculating F and on the assumptions used regarding tow distance and relative net efficiency in the industry-based trawl survey. The F estimates produced were between 0.10 and 0.38, with 61 percent of the F estimates from the cooperative survey less than or equal to the recommended F_{max}=0.20. These F estimates included only 6 months of management restrictions, implemented for Year 2 of the FMP (effective May 1, 2000). The management restrictions consisted of the establishment of monkfish DAS, trip limits, and a minimum fish size. During 1998 and 1999, approximately one-third of the annual landings came from January - April. Thus, roughly, one-third of annual effort was likely expended in 2000 before trip limits were implemented on May 1. This suggests that, even without further restrictions, F estimates for calendar year 2001 will be lower than the F for calendar year 2000, since management restrictions were in force for all of 2001.

Given the proximity of F estimates for calendar year 2000 to F=0.20, preliminary data from the NMFS' fall trawl survey for 2001 further support the conclusion that the proposed measures will end overfishing. These data, which are still preliminary, show positive results for the stock in both management areas. After considering the information presented above, NMFS has determined that the proposed measures are consistent with the FMP objectives of ending overfishing in 2002 and of rebuilding the monkfish stock by 2009.

The Councils have also started to develop Amendment 2 to the FMP to incorporate the results of SAW 34 in

developing revisions to the management program, including the rebuilding plan and the overfishing definition. The Councils intend to implement Amendment 2 by May 1, 2003 (Year 5).

Management Measures

Optimum yield (OY) for Year 4 would be specified at 19,595 metric tons (mt), with TACs for the NFMA and SFMA set at 11,674 mt and 7,921 mt, respectively. The analysis in Framework 1 determined that these TACs are consistent with the fishing mortality threshold for ending overfishing of F=0.2, recommended by SAW 34.

Framework 1 would also adjust the monkfish trip limits in the SFMA as needed to achieve the TACs while considering the effect of a Federal court order issued on Feburary 15, 2002, in the case of *Hall et al.* v. *Evans et al.*(C.A. No. 99–5491 (D.R.I.), pursuant to an initial court decision issued on August 14, 2001, vacating differential gear-based trip limits for trawl and gillnet vessels. This framework would allocate, as in Years 2 and 3, 40 monkfish DAS to limited access permit holders for Year 4, with no monkfish trip limit while fishing on a monkfish or multispecies DAS in the NFMA, and a trip limit of 550 lb (249 kg) (tail weight, per DAS) for permit categories A and C, or 450 lb (204 kg) (tail weight, per DAS) for permit categories B and D while fishing on a monkfish DAS in the SFMA. The incidental catch limits, which vary by permit category and fishing area, would continue at current levels for 1 additional year.

Technical Correction

This proposed rule would also make a technical correction to the regulatory language at § 648.94(f) citing area declaration procedures. This would make the regulatory language consistent with the FMP, which stated that under certain circumstances vessels with multispecies, scallop, and monkfish DAS permits would be required to declare into the NFMA to fish. The collection-of-information requirements for the FMP approved under the Paperwork Reduction Act (PRA) also contained references to the multispecies, scallop and monkfish DAS permit vessels. When the regulations implementing the FMP were published, NMFS inadvertently only referenced vessels with monkfish DAS permits, rather than also including vessels with multispecies and scallop permits. Therefore, this action proposes to correct the current regulatory language at § 648.94(f) to include all vessels fishing for monkfish under a multispecies, scallop, or monkfish DAS in the NFMA.

Classification

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

The Council and NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, the reason for being considered, and the legal basis for this action are contained at the beginning of the preamble and in the SUMMARY section of the preamble. This action does not contain any additional collection-of-information, reporting or recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules. A summary of the analysis follows:

The IRFA analysis examined the economic impacts of three sets of management alternatives for Year 4 of the FMP: Preferred and non-preferred alternatives for OY and management area TACs, and a ''no action'' alternative. The preferred alternative consists of the measures outlined in this proposed rule. These measures consist of a delay in the Year 4 default management measures for 1 year and of the establishment of an OY of 19,595 mt for Year 4, with management area TACs of 11,674 mt and 7,921 mt for the NFMA and SFMA, respectively. This OY is equivalent to the level of landings generated during Year 2 of the rebuilding program.

The non-preferred alternative would establish an OY of 11,697 mt for Year 4, with management area TACs of 5,673 mt and 6,024 mt for the NFMA and the SFMA, respectively. This OY is equivalent to the OY specified for Years 2 and 3 of the rebuilding plan for monkfish. In addition, the preferred and non-preferred alternatives would adjust the directed monkfish trip limits in the SFMA to achieve corresponding TAC for that area. The ''no action'' alternative considers the impacts associated with default management measures.

The category of entities likely to be affected by this action are the limited access monkfish permit holders, which are virtually all small entities, primarily trawl and gillnet vessels fishing in the SFMA. Thus, analysis of the impacts of this proposed rule necessarily includes impacts on all small entities affected. The preferred alternative affects only a subset of those entities, primarily trawl and gillnet vessels fishing in the SFMA. As of March 13, 2002, there were 704 vessels holding active limited access monkfish permits and an additional 34 vessels holding limited access monkfish permits in a Confirmation of Permit History. Approximately 160 of these vessels declared their intention to fish in the NFMA for at least 30 days during the 2001 fishing year (May 1, 2001, to April 30, 2002), thereby fishing under the less restrictive management measures of the NFMA.

The preferred alternative would result in loss of income from fishing year 2000 levels for several vessel types. However, these losses are lower than the losses that would result from implementation of either the non-preferred or no action alternative. Under the preferred alternative, approximately 10 percent of vessels less than 50 ft (15.24 m) in length would experience a 3.4-percent or greater reduction in income as a result of the proposed measures. However, 10 percent of these vessels would experience a 12.4-percent or greater reduction in income under the non-preferred alternative and a 54.6-percent or greater loss in income under the ''no action'' alternative. The income of vessels in other size categories would either not be affected by implementation of the preferred alternative, or would be reduced by less than 1 percent. Conversely, 10 percent of vessels greater than or equal to 50 ft (15.24 m) in length would experience some income loss under the non-preferred and ''no action'' alternatives. For example, vessels between 50 and 70 feet (21.34 m) in length would experience an income loss of 1.5 percent or greater under the non-preferred alternative, and a 10.2-percent or greater loss in income under the ''no action'' alternative.

Vessels that fish for monkfish but that are not eligible for limited access permits to fish for Northeast multispecies or sea scallops (category A and B permits) would be the vessels most severely impacted by the no action alternative. Under this alternative, 10 percent of these vessels would lose 100 percent of their net income from fishing. However, 10 percent of vessels in these categories would likely not be affected at all because their landings during the 2000 fishing year were at or below the incidental catch levels allowed under the ''no action'' alternative. Impacts to these vessels would be substantially less under either the preferred or non-preferred alternatives. Under the preferred alternative, 10 percent of these vessels would experience no income loss, but 50 percent would experience an income loss of 3.1 percent or greater. Under the non-preferred alternative, 10 percent of these vessels would experience no income loss, but 50 percent would experience an income loss of 9.9 percent or greater.

Under any of the three alternatives, vessels that hold limited access permits for either multispecies or scallops in addition to monkfish (category C and D) would be the least affected of all vessels holding limited access monkfish permits. Under the preferred alternative, category C vessels have a higher possession limit than category D vessels. Ten percent of category C vessels would experience a 0.8–percent or greater reduction in income, and 10 percent of category D vessels would experience a 2.9–percent or greater reduction in income. Under the non-preferred alternative, category C vessels also have a higher trip limit than category D vessels. Category C vessels would experience a 3.7–percent or greater loss in income, while category D vessels would experience a 5.9–percent or greater loss in income. Finally, the ''no action'' alternative would result in 10 percent of category C vessels having a 25.8–percent loss in income, while category D vessels would experience a 43.3–percent loss in income.

Geographically, vessels homeported in New Jersey and Delaware (combined) would be the vessels most affected under all three alternatives. Under the ''no action'' alternative, 10 percent of these vessels would experience a 72–percent or greater loss in income, while 10 percent of these vessels would experience a 12.5–percent or greater loss in income under the non-preferred alternative. Under the preferred alternative, 10 percent of the vessels homeported in New Jersey and Delaware would experience only a 2.1–percent or greater loss in income.

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

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This action makes a technical correction to the regulatory language referencing area declaration procedures. This collection-of-information requirement that is subject to the PRA has been approved by OMB under control number 0648–0202. Public reporting burden for this collection of information is estimated to average 3 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attention: NOAA Desk Officer).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, reporting and recordkeeping requirements.

March 29, 2002.

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.* For fishing year 2002, all limited access monkfish permit holders shall be allocated 40 monkfish DAS. Multispecies and scallop limited access permit holders who also qualify for a limited access monkfish permit shall be allocated up to 40 monkfish DAS, depending on whether they have sufficient multispecies and/or scallop DAS to use concurrently with their monkfish DAS, as required by paragraph (b)(2) of this section. For fishing years 2003 and thereafter, no monkfish DAS will be allocated to any limited access monkfish permit holder.

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3. In § 648.94, revise paragraph (b)(1); remove and reserve paragraph (b)(2); and revise the introductory paragraph headings of (b)(3), (b)(4), (b)(5), and (b)(6); the first sentence of paragraph (b)(7), the introductory paragraph headings of (c)(2)(i) and (ii), and the first sentence of paragraph (f) to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(1) *Vessels fishing under the monkfish DAS program in the SFMA.* (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 (249 kg) tail-weight or 1,826 lb (828 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(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 DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(iii) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(1)(ii) and (iii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(2) [Reserved]

(3) *Category C and D vessels fishing during a multispecies DAS prior to May 1, 2003—* * * *

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(4) *Category C and D vessels fishing during a multispecies DAS from May 1, 2003, and thereafter—* * * *

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(5) *Category C and D vessels fishing under the scallop DAS program prior to May 1, 2003.* * * *

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(6) *Category C and D vessels fishing under the scallop DAS program from May 1, 2003, and thereafter.** * *

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(7) *Category C and D scallop vessels declared into the monkfish DAS program without a dredge on board.* Category C and D vessels that have declared into the monkfish DAS program and that do not fish with or have on board a dredge are subject to the same possession limits as specified at paragraph (b)(1) of this section. * * *

(c) * * *

(2) * * *

(i) *Prior to May 1, 2003.** * *

(ii) *From May 1, 2003, and thereafter.** * *

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(f) *Area declaration.* In order for a vessel fishing under a multispecies, scallop, or monkfish DAS to fish for monkfish under the less restrictive management measures of the NFMA, such vessel must declare into, and fish for monkfish exclusively in, the NFMA for a period of not less than 30 days. * * *

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[FR Doc. 02–8076 Filed 4–3–02; 8:45 am]

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