was not used for the initial LFSM/LFSMD paired sample set.) The low-level LFSM/LFSMD fortification concentration must be within ±50% of the MRL for each contaminant (e.g., for an MRL of 1 µg/L the acceptable fortification levels must be between 0.5 µg/L and 1.5 µg/L). The mid-level LFSM/LFSMD fortification concentration must be within ±20% of the mid-level calibration standard for each contaminant, and should represent, where possible and where the laboratory has data from previously analyzed samples, an approximate average concentration observed in previous analyses of that analyte. There are no UCMR contaminant recovery acceptance criteria specified for LFSM/LFSMD analyses. All LFSM/LFSMD data are to be reported.

* * * * *

(vi) *Reporting.* You must require your laboratory to submit these data electronically to the State and EPA using EPA's electronic data reporting system, accessible at *(http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/ucmr3/reporting.cfm),* within 60 days from the sample collection date. You then have 30 days from when the laboratory posts the data to review, approve and submit the data to the State and EPA, via EPA's electronic data reporting system. If you do not electronically approve and submit the laboratory data to EPA within 30 days of the laboratories posting to EPA's electronic reporting system, the data will be considered approved and available for State and EPA review.

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PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

5. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart B—Primary Enforcement Responsibility

6. Section 142.16 is amended as follows:

a. In paragraph (j) introductory text by removing "§ 141.40".

b. In paragraph (j)(1) by revising the first sentence.

§ 142.16 Special primacy requirements.

* * * * *

(j) * * *

(1) If a State chooses to issue waivers from the monitoring requirements in §§ 141.23 and 141.24, the State shall describe the procedures and criteria which it will use to review waiver applications and issue wavier determinations. * * *

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[FR Doc. 2011–4641 Filed 3–2–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 10–108; Report No. 2925]

Petition for Reconsideration of Action of Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, a Petition for Reconsideration (Petition) has been filed in the Commission's Rulemaking proceeding listed in this document (Table of Allotments, FM Broadcast Stations (Pacific Junction, Iowa)).

DATES: Oppositions to the Petition must be filed by March 18, 2011. Replies to an opposition must be filed March 28, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 2925, released February 7, 2011. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

This document is published pursuant to 47 CFR 1.429(e). *See* 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)).

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Pacific Junction, Iowa) (MB Docket No. 10–108).

Number of Petitions Filed: 1.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–4687 Filed 3–2–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090225241–0561–02]

RIN 0648–AX70

Fisheries of the Northeastern United States; Monkfish; Amendment 5

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

ACTION: Proposed rule; amendment; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 5 to the Monkfish Fishery Management Plan (Monkfish FMP). The New England and Mid-Atlantic Fishery Management Councils (Councils) developed Amendment 5 to bring the Monkfish FMP into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS is considering disapproving proposed annual catch targets (ACT) that are not consistent with the most recent scientific advice. This proposed rule also proposes three management measures in Amendment 5 to promote efficiency and reduce waste: Automatic days-at-sea (DAS) adjustment for trip limit overages; authorization to land monkfish heads; and enable changes to the Monkfish Research Set-Aside (RSA) Program through framework adjustment, and to bring the biological and management reference points in the Monkfish FMP into compliance with recently revised National Standard 1 (NS1) Guidelines.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on April 4, 2011.

ADDRESSES: An environmental assessment (EA) was prepared for Amendment 5 that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 5, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

You may submit comments, identified by 0648–AX70, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*

• *Fax:* (978) 281–9135, Attn: Allison McHale.

• *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Monkfish Amendment 5 Proposed Rule."

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Allison McHale, Fishery Policy Analyst, (978) 281–9103; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils (Councils), with the New England Fishery Management Council (NEFMC) having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA).

The Councils developed Amendment 5 with the primary goal of bringing the Monkfish FMP into compliance with the requirements of the reauthorized Magnuson-Stevens Act. The 2006 reauthorization of the Magnuson-Stevens Act contains several new requirements, including the requirement that all fishery management plans contain ACLs to prevent overfishing, and measures to ensure accountability.

Amendment 5 was also developed to bring the Monkfish FMP into compliance with recently revised National Standard 1 (NS1) Guidelines (74 FR 3178; January 16, 2009), which not only established a process for setting ACLs and guidance for establishing AMs, but also provided updated guidelines for establishing reference points and control rules (*i.e.,* maximum sustainable yield (MSY), optimum yield (OY), overfishing limits (OFL), acceptable biological catch (ABC), ACLs, and annual catch targets (ACTs)), and clarifies the relationships among them. Amendment 5 would establish biological and management reference points to be consistent with NS1 guidelines utilizing recent scientific information from the 2007 Northeast Data Poor Stocks Working Group (DPWG) assessment.

New biological reference points were developed as part of the 2007 assessment, based on a revised yield-per-recruit analysis (using a revised value of the natural mortality rate) and results of a length-tuned model that incorporates multiple survey indices and catch data. However, the 2007 assessment results were accompanied by substantial uncertainty and are, therefore, viewed with caution. Reservations highlighted in the 2007 DPWG assessment report include: (1) Input uncertainties (under-reported landings and unknown discards of monkfish during the 1980s and incomplete understanding of key biological parameters such as age and growth, longevity, natural mortality, and stock structure); (2) the shorter assessment time frame of data used (1980–2006) than was used in previous assessments (1963–2006); and (3) the relatively recent development of the assessment model. More specifically, the assessment hinges on assumptions regarding growth, longevity, and natural mortality of monkfish, all of which are poorly known. In addition, commercial catches prior to 1993 are not well characterized. Framework Adjustment 5 (Framework 5), implemented on May 1, 2008 (73 FR 22831, April 28, 2008), adopted the revised reference points recommended by the DPWG. Based upon these revised biomass reference points, Framework 5 determined that both monkfish stocks were no longer overfished, and are considered rebuilt. The Monkfish Assessment Summary Report for 2007 can be found at *http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0713/.*

A more recent assessment of the monkfish resource was conducted during the first half of 2010 by the 50th Stock Assessment Review Committee (SARC 50). The full report for this assessment was released in August 2010 and can be found at *http://www.nefsc.noaa.gov/publications/crd/crd1017/.* The SARC 50 assessment concluded that both stocks are above their respective current biomass thresholds, as well as new biomass thresholds recommended by the assessment, indicating that both stocks are not overfished. Furthermore, the current estimated fishing mortality rate for each stock is below their respective fishing mortality thresholds. Thus, overfishing is not occurring on either stock. Given the timing of SARC 50 and when the Councils took final action on Amendment 5 in June 2010, this action does not update the biomass reference points in the FMP. Because SARC 50 shows such significant changes in the fishery in the NFMA that revisions to management measures may be required, NMFS is considering disapproving the specification of the NFMA ACT on the ground that it is not consistent with the most recent scientific advice. The NEFMC has initiated a framework adjustment to the Monkfish FMP (Framework 7), to be implemented immediately following Amendment 5, for this purpose and to adjust the ACT for the NFMA to be consistent with the most recent scientific advice. Further information on how Framework 7 relates to this amendment is provided under proposed measure 3, "Proactive AM."

Similar to the 2007 assessment, the 2010 assessment panel expressed serious concerns regarding the high levels of uncertainty in the assessment. The Monkfish Assessment Summary Report for 2010 states, "The assessment results continue to be uncertain due to cumulative effects of under-reported landings, unknown discards during the 1980s, uncertainty in survey indices, and incomplete understanding of key biological parameters such as age and growth, longevity, natural mortality and stock structure contributing to retrospective patterns primarily in the northern management area." Unlike the 2007 assessment, the 2010 assessment was able to conduct projections to evaluate stock trends based on anticipated fishing levels. However, these projections are also considered highly uncertain, since they are based on the outputs of the assessment model. Despite this uncertainty, the projections indicate that the NFMA is more

vulnerable to overfishing or becoming overfished during 2011–2016 if total catches approach the proposed ABC, while the SFMA is less vulnerable.

Amendment 5 also proposes measures intended to promote efficiency and reduce waste in the monkfish fishery. First, a measure is being proposed that would minimize regulatory discards resulting from monkfish trip limit overages by allowing vessels to land an additional trip limit (1 day's worth) and have their DAS usage for that trip adjusted to account for the overage. Second, a measure is being proposed that would allow the landing of monkfish heads separate from the body by adding a new conversion factor and authorized landing form to the FMP. Lastly, a measure is being proposed in Amendment 5 that would enable changes to be made to the Monkfish RSA Program through a framework adjustment versus an FMP amendment.

Proposed Measures

1. Biological and Management Reference Points

The biological and management reference points currently in the Monkfish FMP are used to determine if overfishing is occurring on either stock ($F_{threshold}$), if either stock is overfished ($B_{threshold}$), or if either stock is rebuilt (B_{target}). However, these reference points alone are not sufficient to comply with the Magnuson-Stevens Act and the recently updated NS1 guidelines. As a result, Amendment 5 proposes to establish control rules to specify MSY, OY, OFL, and ABC for each monkfish stock, as described in the following paragraphs.

MSY is defined under the Magnuson-Stevens Act as "the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological, environmental conditions and fishery technological characteristics (*e.g.,* gear selectivity), and the distribution of catch among fleets." The overfishing threshold ($F_{threshold}$) for monkfish is defined under the Monkfish FMP as equivalent to F_{msy} or its proxy. Further, the target biomass reference point (B_{target}) is defined under the Monkfish FMP as B_{msy} or its proxy. Amendment 5 proposes that the MSY control rule be expressed as the product of these two reference points (MSY = $F_{threshold} \times B_{target}$). Based on the 2007 assessment, MSY is calculated to be 17,053 mt for the NFMA and 25,487 mt for the SFMA.

OY is defined under the Magnuson-Stevens Act as "the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities taking into account the protection of marine ecosystems; that is prescribed on the basis of MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and in the case of an overfished fishery, that provides for the rebuilding to a level consistent with producing the MSY in such a fishery." The NS1 guidelines further state that OY should be set at a level that prevents overfishing and rebuilds overfished stocks. Consistent with the NS1 guidelines, the Councils are proposing in Amendment 5 to set OY equivalent to the ACT, which is a proactive AM further described under measure 3 below. Setting OY equal to the ACT would provide the greatest benefit to the Nation since this value represents the maximum yield from the fishery while preventing overfishing, after taking into account scientific uncertainty in the OFL in setting ABC, and management uncertainty in setting measures that will not exceed the ABC.

OFL is defined under the Magnuson-Stevens Act as "the annual amount of catch that corresponds to the estimate of maximum fishing mortality threshold (MFMT) applied to a stock or stock complex's abundance and is expressed in terms of numbers or weight of fish. The OFL is an estimate of the catch level above which overfishing is occurring." Consistent with this definition, Amendment 5 proposes that OFL be expressed as the product of $F_{threshold}$ and current exploitable biomass ($B_{current}$) (OFL = $F_{threshold} \times B_{current}$).

ABC is defined under the Magnuson-Stevens Act National Standard 1 Guidelines as "a level of stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty, and should be specified based on the ABC control rule." The revised NS1 guidelines further state that "ABC may not exceed OFL," and that "the determination of ABC should be based, when possible, on the probability that an actual catch equal to a stock's ABC would result in overfishing." These guidelines also require that the Council's ABC control rule be based on scientific advice provided by its Scientific and Statistical Committee (SSC), and that the SSC recommend the ABC to the Council.

The NEFMC's SSC, at its March 17, 2009, meeting, endorsed the proxy reference points for B_{msy} and F_{msy}, as well as the estimates of stock size from the 2007 DPWG. However, in its March 30, 2009, report to the NEFMC, the SSC noted "considerable uncertainties in the assessment model preclude its use to determine probability of exceeding the projected Overfishing Level of catch." As a result, the SSC recommended an interim ABC "based on the product of the average exploitation rate during the recent period of stable or increasing trend in biomass in both management units and the most recent estimate or index of exploitable biomass." The SSC recommended this data-poor default method for determining an interim ABC because it produces catch advice that is not directly based on OFL and its uncertainty. However, the SSC noted that "the method of determining ABC should be considered an interim proxy until Overfishing Level of Catch and its uncertainty can be projected." Thus, as required by the NS1 guidelines, the Councils are recommending in Amendment 5 an ABC that is consistent with the interim ABC approach recommended by the SSC.

The Monkfish Plan Development Team (PDT) reviewed the results of the statistical catch at length (SCALE) model from the 2007 assessment and determined that the periods for stable or increasing biomass were 1999–2006 for the NFMA, and 2000–2006 for the SFMA. Using the average exploitation rates for these time periods, and the most recent estimate of exploitable biomass (2006), the PDT calculated an ABC of 17,485 mt for the NFMA, and 13,326 mt for the SFMA. This would result in a buffer between the ABC and the OFL of 23 percent (5,234 mt) for the NFMA, and 53 percent (14,930 mt) for the SFMA.

2. ACLs

The Magnuson-Stevens Act, at section 303(a)(15), requires that any FMP establish a mechanism for specifying ACLs at a level that prevents overfishing, and also include measures that ensure accountability. Section 302(h)(6) of the Magnuson-Stevens Act and the NS1 guidelines further state that the ACL for a given stock or stock complex cannot exceed the ABC as recommended by the SSC. NS1 further notes that the ACL serves as the basis for invoking AMs, and that ACLs, in coordination with AMs, must prevent overfishing. Based on the requirements of the Magnuson-Stevens Act and the NS1 guidelines with respect to ACLs and AMs, Amendment 5 proposes to establish ACLs that are equal to the respective ABC for each management area, since scientific uncertainty has been accounted for in establishing these ABCs, and management uncertainty will be accounted for in the establishment of ACTs for each management area as a proactive AM. Thus, the Councils determined that there was no technical

basis for setting the ACLs for each management area below their respective ABC. In its March 30, 2009, report, the SSC supported the Councils' ACL recommendation and noted that "the magnitude of recent catch has low risk of exceeding the OFL or the proposed interim ABC" since in 2006, total catch was only 32 percent of the proposed OFL for the NFMA, and 34 percent of the proposed OFL for the SFMA; and total catch in 2007 was estimated by the PDT to be 24 percent of the proposed OFL for the NFMA, and 31 percent of the proposed OFL for the SFMA.

3. Proactive AM

The NS1 guidelines describe AMs as management controls aimed at preventing the ACL from being exceeded, and to correct or mitigate overages of the ACL. Amendment 5 proposes both forms of AMs for the monkfish fishery: A proactive AM in the form of ACTs for each management area, and a reactive AM in the form of an ACL overage provision. This section describes the proactive AM.

The proactive AM being proposed in Amendment 5 would establish ACTs for each management area. The purpose of ACTs is to account for management uncertainty, as noted in the NS1 guidelines. Rather than establishing ACTs based on a given formula or control rule, the Councils developed a range of ACT options for each management area that were based upon fixed increases from current total allowable landing (TAL) levels plus discards. This range was narrowed down to two ACT options for each management area, all of which would result in increases over current TALs. These options are presented in Table 1. The discard rates for each management area used in the calculation of these ACT options were 7.5 percent for the NFMA and 29 percent for the SFMA.

TABLE 1—ACT OPTIONS FOR THE NFMA AND SFMA

	TAL increase (percent)	TAL (mt)	Discards (mt)	ACT (mt)	Percent of ACL
NFMA ACT Option 1	50	7,500	563	8,063	46
NFMA ACT Option 2	100	10,000	750	10,750	62
SFMA ACT Option 1	40	7,140	2,071	9,211	69
SFMA ACT Option 2	75	8,925	2,588	11,513	86

The Councils selected Option 2 for each management area as their preferred alternatives. Thus, Amendment 5 proposes an ACT of 10,750 mt for the NFMA, and 11,513 mt for the SFMA. However, based on the results of SARC 50, the SSC recently revisited their previous ABC recommendation at an August 24, 2010, meeting. After much discussion concerning the uncertainty with the assessment and alternate methods for calculating ABC to account for this uncertainty, the SSC agreed to maintain the existing interim ABC approach it previously recommended. The recalculated ABCs that incorporate the results of SARC 50 would be 7,592 mt for the NFMA, and 12,316 mt for the SFMA. This results in a revised ABC for the NFMA that is 3,158 mt lower than the NFMA ACT being recommended by the Councils in Amendment 5, creating an inconsistency with the recalculated ABC. Conversely, the recalculated ABC for the SFMA is 803 mt higher than the Council's recommended ACT for that area. Although this reduces the buffer between the ACT and the ABC/ACL for the SFMA to only 6.5 percent, it does not create an inconsistency as is found in the NFMA. In response to the SSC's most recent advice, and the recalculated ABCs for both management areas based on the results of SARC 50, the NEFMC initiated Framework Adjustment 7 (Framework 7) at its September 28–30, 2010, meeting to revise the ACT for the NFMA to be consistent with the most recent scientific advice, and to incorporate the results of SARC 50 into the FMP. As a result, NMFS is considering approving the establishment of a proactive AM in the form of ACTs for both management areas, but disapproving the specification of the NFMA ACT in Amendment 5 on the grounds that it is not consistent with the most recent scientific advice. This would leave the current measures for the NFMA in place until they are superseded by a revised ACT and specification of DAS and trip limits under Framework 7, which is expected to be implemented during the summer of 2011.

The ACTs being considered in Framework 7 are equivalent or slightly higher than the current TAL for the NFMA. Additionally, NFMA landings have been well below the TAL for the past 2 years (29 percent in 2008, and 33 percent in 2009). Thus, NMFS does not expect delaying action on the establishment of an ACT for the NFMA would result in landings exceeding the ACTs being considered in Framework 7 during the 2011 fishing year, which begins May 1, 2011.

If this rule is implemented by the start of the 2011 fishing year, any monkfish landings that occur between May 1, 2011, and the time the final rule is effective would accrue against the ACT for that year and be used to trigger AMs.

4. Reactive AM

As noted above, Amendment 5 proposes both forms of AMs referenced in the NS1 guidelines for the monkfish fishery. With respect to AMs for when an ACL is exceeded, the NS1 guidelines state, "On an annual basis, the Council must determine as soon as possible after the fishing year if an ACL was exceeded." The guidelines go on to state that, "if an ACL was exceeded, AMs must be triggered and implemented as soon as possible to correct the operational issue that caused the ACL overage, as well as any biological consequences to the stock or stock complex resulting from the overage when it is known." In light of this requirement, the Councils are recommending in Amendment 5 a reactive AM that would require the Councils to assess annual catch in relation to the previous year's ACL once final landings and discard estimates become available during the following fishing year. If an ACL overage is determined to have occurred, it would be deducted pound-for-pound from the ACT. Adjustments to management measures (DAS and trip limits) would be then developed by the Councils over the course of the year in which the overage was identified, with the goal of ensuring the revised ACT is not exceeded. The revised ACT and adjusted management measures would then be implemented in the second fishing year following the one in which the overage occurred. For example, if an overage of the 2011 ACL for the NFMA is determined to have occurred upon review of final 2011 landings and discards sometime during the 2012 fishing year, the Councils would adjust the ACT and develop revised

management measures for the 2013 fishing year.

If the Councils do not take the required action to account for the ACL overage as outlined above, the NMFS Northeast Regional Administrator would take action to adjust the ACT and implement revised DAS and/or trip limits using a formulaic approach developed by the PDT. These adjustments would be implemented in accordance with the requirements of the Administrative Procedure Act and other applicable law. Notification of the proposed ACL revision and DAS and/or trip limit adjustments would be published in the **Federal Register** no later than January 1, if possible, for implementation on May 1 of the second fishing year following the fishing year in which the ACL overage occurred.

5. Specification of DAS and Trip Limits

The Councils considered a range of DAS and trip limit options to achieve the respective ACT options for each management area. The range of options consisted of three approaches: Maintain the current DAS allocation and adjust the trip limit; maintain the current trip limit and adjust the DAS; or adjust both DAS and trip limits. The DAS and trip limit options for each ACT option considered by the Councils in Amendment 5 is presented in Tables 2 and 3 for the NFMA and the SFMA, respectively. The proposed trip limit for the NFMA under the Category AC limited access permit group is the same across all three options (1,250 lb (567 kg)) because it represents the highest reported daily landing amount reported prior to the implementation of trip limits during fishing year 2007. Further, the first two DAS and trip limit options under SFMA ACT Option 1 (*i.e.,* maintaining current DAS (1A) and maintaining current trip limits (1B)) are identical because this ACT option, less discards, is equivalent to the current monkfish landings level for the SFMA. Thus, no change in DAS or trip limits would be necessary to achieve that ACT, unless one of these variables is modified (*e.g.,* a reduction in DAS under SFMA Option 1C). The first and third DAS and trip limit options under SFMA ACT Option 2 are also identical, since the Councils did not want to include an option with fewer than 23 DAS for the SFMA.

TABLE 2—NFMA DAS AND TRIP LIMIT OPTIONS

NFMA TAC option (mt)	NFMA option	AC trip limit (tail wt. per DAS)	BD trip limit (tail wt. per DAS)	DAS
8,063	1A	1,250 lb (567 kg)	700 lb (318 kg)	31
	1B	1,250 lb (567 kg)	470 lb (213 kg)	45
	1C	1,250 lb (567 kg)	600 lb (272 kg)	40
10,750	2A	1,250 lb (567 kg)	950 lb (431 kg)	31
	2B	1,250 lb (567 kg)	470 lb (213 kg)	51
	2C	1,250 lb (567 kg)	800 lb (363 kg)	40

TABLE 3—SFMA DAS AND TRIP LIMIT OPTIONS

SFMA TAC option (mt)	NFMA option	AC trip limit (tail wt. per DAS)	BD trip limit (tail wt. per DAS)	DAS
9,211	1A	550 lb (249 kg)	450 lb (204 kg)	23
	1B	550 lb (249 kg)	450 lb (204 kg)	23
	1C	700 lb (318 kg)	600 lb (272 kg)	15
11,513	2A	700 lb (318 kg)	600 lb (272 kg)	23
	2B	550 lb (249 kg)	450 lb (204 kg)	28
	2C	700 lb (318 kg)	600 lb (272 kg)	23

As stated previously, the Councils selected the highest ACT options for each management area as their preferred alternatives (10,750 mt and 11,513 mt for the NFMA and SFMA, respectively). In terms of DAS and trip limits, the Councils selected Option 2C for the NFMA, which would specify 40 DAS, and trip limits of 1,250 lb (567 kg) tail wt. per DAS for Category A and C vessels and 800 lb (363 kg) tail wt. per DAS for Category B and D vessels. For the SFMA, the Councils selected Option 2B as their preferred alternative, which would specify 28 DAS, and trip limits of 550 lb (249 kg) tail wt. per DAS for Category A and C vessels and 450 lb (204 kg) tail wt. per DAS for Category B, D, and H vessels. The Councils' preferred DAS and trip limit options are, therefore, those being proposed in Amendment 5.

6. Automatic DAS Adjustment for Trip Limit Overage

Amendment 5 proposes a measure that would allow a limited access monkfish vessel to land up to the equivalent of one additional day's worth of its trip limit more than would otherwise be authorized based on the vessel's actual monkfish DAS usage for that trip. In order to land the additional fish, this rule proposes to require the vessel to notify NMFS of the overage via vessel monitoring system (VMS) prior to crossing the VMS demarcation line, or via phone using the Agency's interactive voice response (IVR) system at least 1-hour prior to landing. To account for the day's worth of its trip limit overage, the monkfish DAS charged to the vessel would be increased to be equivalent to the next 24-hr period plus one minute. For example, if a limited access Category C vessel fishing in the SFMA has two monkfish trip limits worth of fish on board (*i.e.,* 1,100 lb tail wt. (499 kg) or 3,652 lb whole wt. (1,657 kg)), but has only been declared into the monkfish DAS program for 15 hr, the vessel may land the additional fish (*i.e.,* the amount of monkfish that exceed what is allowed for 15 hr of fishing) only if NMFS is properly notified as described above. The monkfish DAS charged to the vessel would then be adjusted from 15 hr to 24 hr and 1 minute.

In order to effectively implement this provision, NMFS is proposing that a form be added to the VMS system that a vessel operator would complete and send to NMFS prior to crossing the VMS demarcation line on the vessel's return to port. With respect to the call-in notification requirement recommended by the Councils, NMFS recognizes that

it may not be feasible for all vessels to provide a call-in notification via cell phone when outside the VMS demarcation line. As such, NMFS is proposing a revision to this requirement in this proposed rule that would require vessels that do not use the VMS notification requirement to notify NMFS of the trip limit overage by calling into the IVR system at least 1-hour prior to landing.

7. Authorization to Land Monkfish Heads

Amendment 5 proposes to authorize the landing of monkfish heads separately from the body in Amendment 5, provided the total weight of the heads does not exceed 2.32 times the total weight of monkfish tails on board. Currently, vessels are not allowed to land monkfish heads separate from the body, since monkfish heads are not an authorized product form under the regulations implementing the FMP, and there is no appropriate conversion factor. Recognizing that some individuals are taking advantage of emerging markets for the heads, the Councils are recommending that the landing of this new product form be authorized with an appropriate conversion factor to aid enforcement of the daily trip limit. The intent of this proposed measure is to clarify that a vessel cannot land monkfish heads without an appropriate weight of tails on board.

8. Allow Changes to Monkfish RSA Program via Framework Action

Currently, changes to the Monkfish RSA Program must be made through an amendment to the FMP. Amendment 5 proposes to allow changes to be made to this RSA program through a framework adjustment in order to make necessary improvements to this program in a more timely manner. This action would not preclude the Councils from conducting the necessary environmental analysis under the National Environmental Policy Act (NEPA), and complying with other applicable laws when developing a framework adjustment for this purpose.

9. Technical Amendments

This proposed rule also includes a technical amendment that would adjust the conversion factor for whole monkfish to reflect how monkfish are actually landed, *i.e.,* head on and gutted. The current tail-to-whole-weight conversion factor for monkfish is 3.32. However, this constitutes the live weight of monkfish, and does not reflect that monkfish are actually landed in head-on and gutted form. A more accurate tail-to-whole-weight (landed) conversion factor is 2.91, which reflects the conversion to a monkfish that still has its head attached, but its guts removed. This technical correction to the conversion factor would result in a reduction in the whole-weight equivalent trip limit, but not to the tail-weight trip limit, which is the value recommended by the Councils. Additionally, this would change the monkfish heads conversion factor proposed by the Council from 2.32 to 1.91 to be consistent with this corrected conversion factor.

In addition to the above technical amendment, this rule would also remove the letter of authorization (LOA) requirement for vessels fishing in the NFMA with a VMS unit found under § 648.92(b)(1)(iii), since this requirement was removed from the general area declaration requirements found at § 648.94(f) in the final rule implementing Framework Adjustment 5 to the Monkfish FMP (73 FR 22831; April 28, 2008).

This rule also would also clarify the meeting requirements for framework adjustments with respect to this joint FMP to reflect that one framework meeting must be held with each Council, versus one framework meeting overall.

Finally, this rule would update the specification and framework adjustment processes for the Monkfish FMP to include procedures for specifying ACLs and AMs.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Monkfish FMP, Amendment 5, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Pursuant to Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

A notice of availability (NOA) for Amendment 5 was published on February 1, 2011. Public comments are being solicited on the amendment through the end of the comment period on April 4, 2011. Public comments on the proposed rule must be received by the end of the comment period on the amendment, as published in the NOA, to be considered in the decision to approve or disapprove the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment, but may be considered in the development of the final rule. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

The NEFMC prepared an EA for Amendment 5 to the Monkfish FMP that discusses the impact on the environment as a result of this rule. A copy of the EA is available from the Council (*see* **ADDRESSES**).

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), and consists of the draft IRFA in Amendment 5, this preamble, and the following summary. The IRFA describes the economic impacts this proposed rule, if adopted, would have on small entities. 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** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from the NEFMC (*see* **ADDRESSES**).

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses ($4.0 million in annual gross sales). Information on costs in the fishery is not readily available and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

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

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The management measures proposed in Amendment 5 have the potential to affect all Federally permitted monkfish vessels that are actively participating in the fishery. As of September 2009, there were 758 limited access monkfish permit holders and 2,156 open access permit holders. Of these, 573 limited access permit holders (76 percent) actively participated in the monkfish fishery during the 2008 fishing year, while only 504 open access permit holders (23 percent) actively participated in the fishery during this time period. Thus, this action is

expected to impact at least 1,077 currently active monkfish permit holders.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

1. Biological and Management Reference Point Alternatives

The proposed action to change the biological and management reference points in the Monkfish FMP (MSY, OY, OFL, and ABC) will have no immediate impact on vessels, since these changes do not directly change any management measures or modify vessel level aspects of the Monkfish FMP. However, the establishment of new reference points that are consistent with NS1 guidance would allow for better monitoring and management of the monkfish fishery, potentially resulting in positive effects on vessels in the future. The no action alternative would maintain the existing biological and management reference points in the Monkfish FMP. As a result, taking no action would result in no additional economic impacts beyond those identified in earlier actions affecting this fishery.

2. ACL and AM Alternatives

The Councils' preferred alternative to set the ACL equivalent to the ABC has no direct effect on vessels, since the level of fishing would be set by the establishment of an ACT as a proactive AM. Scientific uncertainty is accounted for in the ACL, while the ACT accounts for management uncertainty. Thus, if scientific uncertainty can be reduced in the future, it would lead to a higher ACL, and possibly a higher ACT as a consequence. A higher ACT would then result in greater revenue opportunities for vessels.

The no action alternative would not establish ACLs or AMs for the monkfish fishery, and would be inconsistent with the Magnuson-Stevens Act and NS1 Guidelines. Although there is likely no direct economic effect of taking no action, it could have a negative economic impact if the long-term sustainability of the monkfish fishery were affected by not establishing ACLs or AMs.

The purpose of establishing an ACT as a proactive AM is to account for management uncertainty in the ability of management measures in the Monkfish FMP (mainly DAS and trip limits) to limit catch to the prescribed level. The buffer between the ACL and the ACT represents this management uncertainty, and is intended to prevent overfishing from occurring in the event management measures to limit catch are not entirely successful. Since the ACT incorporates discards, actions that reduce discards or management uncertainty would allow for the establishment of an ACT that is closer to the ACL, resulting in higher monkfish revenues and benefits to vessels, but only if the allocation is actually landed versus discarded or left uncaught.

The preferred alternative for the SFMA (Option 2) would set the ACT at 11,513 mt, or 86 percent of the SFMA ACL. In fishing year 2008, monkfish landings exceeded the TAL by 32 percent, suggesting that some of the additional benefits from increased monkfish revenues under the preferred alternative area already being realized in the SFMA. Based on 2008 landings data, the proposed SFMA ACT would increase landings by 40 percent, while Option 1 would maintain landings at existing levels. Thus, the preferred alternative would increase monkfish revenues for vessels beyond those already being realized, while Option 1 would retain revenues at or marginally above current levels.

The preferred alternative for the NFMA (Option 2) would set the ACT at 10,750 mt, or 61 percent of the ACL. Although the proposed NFMA ACT could result in landings that are twice the current TAL for the NFMA (5,000 mt), it may not result in higher monkfish revenues since fishing year 2008 landings were 29 percent below the TAL. Thus, the preferred option may have a similar impact on monkfish revenues as the non-preferred Option 1 of 7,500 mt if the proposed increase in landings is not realized.

Actual quantification of the economic impacts of the proposed ACTs requires specification of management measures, in the form of DAS and trip limits, to achieve the proposed ACT levels. A modified trip limit model was utilized to assess the impact of the DAS and trip limit options, under each ACT option, on monkfish revenues. The model is different from models used for prior monkfish actions in that it accounts for potential impacts on monkfish trips (higher retention and additional trips) resulting from increases in DAS and trip limits, as is being proposed in Amendment 5. The previous model focused on the impacts to monkfish trips resulting from reduced DAS and trip limits, which was generally the case with prior monkfish management actions.

The trip limit model was used to assess the impacts on monkfish revenues of the proposed DAS and trip limit options on vessels fishing in only the NFMA, only in the SFMA, and in both management areas. For vessels fishing only in the NFMA (*see* Table 2), the trip limit model predicts that under the proposed DAS and trip limit options for the NFMA, per trip average vessel return would increase from 0.2 percent under NFMA Option 1A to 2.2 percent under NFMA Option 2B, while average crew payment would increase from 0.5 percent under NFMA Option 1A to 1.8 percent under NFMA Option 2B. The potential increase in total monkfish revenue ranges from 0.8 percent to 24.5 percent under the proposed options. The preferred alternative (Option 2C) would lead to a 0.8-percent increase in per trip average vessel return, a 1.2-percent increase in average crew payment, and an 11-percent increase in total monkfish revenue. This alternative represents a combination of increased trip limits and DAS. However, the maximum benefit (*i.e.,* greatest overall increase in average vessel return, average crew payment, and total monkfish revenue) would likely result from Option 2B, which would maintain the current NFMA trip limits, but increase the DAS.

For the SFMA, the trip limit model indicates that mixed impacts would occur on average vessel return, average crew payment, and total monkfish revenue. The SFMA DAS and trip limit options (*see* Table 3) that result in no changes from current measures (ACT Option 1 combined with DAS and trip limit options 1A or 1B) would result in no changes to any of these parameters. However, DAS and trip limit Option 1C under ACT Option 1 would result in a negative impact on vessels (−1 percent), crew (−1.4 percent), and monkfish revenue (−20 percent). Conversely, the preferred alternative (SFMA ACT Option 2 combined with DAS and trip limit Option 2B) would result in the maximum benefit, having a neutral impact on average vessel return, a 0.7-percent increase in average crew payment, and a 32-percent increase in total monkfish revenue. This option retains the current trip limits currently in effect for the SFMA, but increases the DAS. DAS and trip limit options 2A and 2B would have a similar positive impact on average vessel return and average crew payment (0.5-percent increase and a 0.7-percent increase, respectively), but a much smaller positive impact on total monkfish revenues (7.9 percent) in comparison to the preferred alternative. These identical alternatives would maintain the SFMA DAS allocation at the current level, but increase the trip limits. Thus, it is apparent that increasing DAS has a more favorable impact on all three

parameters, particularly total monkfish revenue, than increasing trip limits.

Vessels that fish in both management areas will be simultaneously affected by the DAS and trip limit options selected for each area. Although vessels that fish in both the NFMA and the SFMA may be more likely to change fishing locations than those that fish solely in one area, the trip limit model assumes that these vessels will continue to fish in the same locations. The results of the trip limit model indicate that there is no single combination of DAS and trip limit options for both management areas that would lead to a best outcome in terms of impact on all three parameters. The largest increase in monkfish revenue is realized under the preferred option for the SFMA combined with the DAS and trip limit Option 2C for the NFMA (same trip limits but increased DAS). However, this combination of options would result in a slight decrease in both average vessel return (1 percent) and average crew payment (0.9 percent). The combined preferred alternatives for each management area would result in a 17.9-percent increase to total monkfish revenue, but with a 1.3-percent decrease in average vessel return and average crew payment.

In terms of a reactive AM, the Councils' preferred alternative would reduce the ACT for a management area in the second year following the year in which an ACL overage occurred, and then adjust the DAS and trip limits to account for the reduced ACT. Harvesting additional monkfish in excess of the ACL would result in immediate short-term revenue increases for those vessels that harvested more than they would have if the ACL had not been exceeded (*i.e.,* those vessels that directly contributed to the ACL overage). However, this gain would be partly lost due to a reduction in the fishing opportunities 2 years later. If the resulting reduction in DAS and trip limits affected all vessels equally, the negative impact would be less severe on those vessels that benefited from the overage. It is also possible that exceeding the ACL would result in longer term impacts on the stock that could lead to further future economic losses to changes in stock size that require more restrictive management measures. Thus, the implementation of the proposed reactive AM, in comparison to the non-preferred alternative of taking no action, would help prevent such long-term losses that may potentially occur as a result of unforeseen ACL overages.

3. Automatic DAS Adjustment for Trip Limit Overage Alternatives

The Councils' preferred alternative is to allow the amount of DAS a vessel is charged to be adjusted to account for a 1-day overage of the trip limit, in comparison to taking no action. Additionally, they selected 24 hr and 1 minute as the preferred option (Option 3) for adjusting a vessel's DAS usage, which reflects the current practice of many vessels. From an economic perspective, any action that allows a vessel to retain more catch without staying out at sea or returning to sea results in an increase in revenues without an increase in costs. Thus, vessel profits are higher. As a result, the preferred alternative provides the greatest benefit to vessels in comparison to the non-preferred alternative of taking no action, and in comparison to the other DAS charging options, since it allows vessels to make fewer trips to retain the same amount of monkfish that they would under the current fishing practice, and utilize the same amount of DAS.

4. Alternatives To Allow Changes to the Monkfish RSA Program

The Councils' preferred alternative is to allow changes to the Monkfish RSA Program through a framework adjustment. This is an administrative change affecting only the procedures that may be used by the Councils to implement changes to the Monkfish RSA Program. As such, there are no direct costs to regulated entities associated with the preferred alternative and the non-preferred no action alternative. However, the preferred alternative would provide increased flexibility, in comparison to the non-preferred no action alternative, to the Councils in terms of modifying the Monkfish RSA Program to address needs and issues as they arise.

5. Alternatives To Allow the Landing of Monkfish Heads

The Councils' preferred alternative would allow fishermen to land unattached monkfish heads up to 2.32 times the weight of tails on board. In comparison to the non-preferred no action alternative, the proposed action would allow the conversion of "waste" that was previously discarded to be converted to a product that could either generate additional revenues or be used by fishermen to offset costs from purchasing bait. Both of these scenarios would provide an economic benefit to monkfish fishermen while allowing for better utilization of the resource. Conversely, the no action alternative would result in no economic effects since it would maintain the status quo.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. This action would add a new reporting element to the VMS and IVR reporting requirements authorized under OMB Control Number 0648–0202 at the end of a vessel's trip. The purpose of this new reporting requirement is to allow limited access monkfish vessels to land one additional monkfish trip limit and have their DAS allocation charged accordingly to account for the additional trip limit. Public reporting burden for the monkfish trip limit overage notification requirement is estimated to average 30 seconds per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. These 30 seconds are included within the total 2-minute estimated response time for the call-in notification requirement, but would be additional for vessels using the VMS procedure. Furthermore, the proposed action is expected to reduce the total number of monkfish trips for vessels that take advantage of this new measure since they would be using their monkfish DAS at a higher rate in exchange for being able to land more monkfish on a given trip. As such, although this action adds a new reporting requirement, it would not change the overall reporting burden associated with the existing VMS and call-in notification requirements authorized under OMB Control Number 0648–0202.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator at the **ADDRESSES** above and to OMB by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285. Notwithstanding any other provision of the law, no person is required to respond to, and no person

shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 25, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, 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 § 648.4, paragraph (a)(9)(i)(N)(*3*) is revised and paragraph (a)(9)(ii) is added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(9) * * *

(i) * * *

(N) * * *

(*3*) *Status of vessels pending appeal.* A vessel denied a limited access monkfish Category G or H permit may fish under the monkfish DAS program, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a valid letter from the Regional Administrator authorizing the vessel to fish under the monkfish DAS program. The letter of authorization must be carried on board the vessel. A vessel with such a letter of authorization shall not exceed the annual allocation of monkfish DAS as specified in § 648.92(b)(1) and must report the use of monkfish DAS according to the provisions of § 648.10. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the letter authorizing temporary participation in the monkfish fishery shall become invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the denial letter. If the appeal is approved, any DAS used during pendency of the appeal shall be deducted from the vessel's annual allocation of monkfish DAS for that fishing year.

(ii) *Monkfish incidental catch vessels (Category E).* A vessel of the United States that is subject to these regulations and that has not been issued a limited access monkfish permit under paragraph (a)(9)(i)(A) of this section is eligible for and may be issued a monkfish incidental catch (Category E) permit to fish for, possess, or land monkfish subject to the restrictions in § 648.94(c).

* * * * *

3. In § 648.92, paragraphs (b)(1) and (b)(2)(i) are revised and paragraph (b)(10) is added to read as follows:

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

* * * * *

(b) * * *

(1) *Limited access monkfish permit holders*—(i) *General provision.* 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 otherwise restricted by paragraph (b)(1)(ii) of this section or modified by § 648.96(b)(3), or unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iv) of this section. The annual allocation of monkfish DAS shall be reduced by the amount calculated in paragraph (b)(1)(v) of this section for the research DAS set-aside. Limited access NE multispecies and limited access sea scallop permit holders who also possess a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

(ii) *DAS restrictions for vessels fishing in the SFMA.* Limited access monkfish vessels may only use 28 of their 40 monkfish DAS allocation in the SFMA. All limited access monkfish vessels fishing in the SFMA must declare that they are fishing in this area through the vessel call-in system or VMS prior to the start of every trip. In addition, 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 shall presume that any monkfish DAS used were fished in the SFMA.

(iii) *DAS declaration provision for vessels fishing in the NFMA with a VMS unit.* Any limited access NE multispecies vessel fishing under a NE multispecies Category A DAS in the NFMA may change its DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip, but prior to crossing the VMS demarcation line upon its return to port or leaving the NFMA, if the vessel exceeds the incidental catch limit specified under § 648.94(c).

(A) Vessels that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS during the course of a trip remain subject to the NE multispecies DAS usage requirements (*i.e.,* use a NE multispecies Category A DAS in conjunction with the monkfish DAS) described in paragraph (b)(2)(i) of this section.

(B) Gillnet vessels that change their DAS declaration in accordance with this paragraph (b)(1)(iii) are not subject to the gillnet minimum mesh size restrictions found at § 648.91(c)(1)(iii), but are subject to the smaller NE multispecies minimum mesh requirements for gillnet vessels found under § 648.80 based upon the NE Multispecies Regulated Mesh Area in which the vessel is fishing.

(iv) *Offshore Fishery Program DAS allocation.* A vessel issued a Category F permit, as described in § 648.95, shall be allocated a prorated number of monkfish DAS as specified in § 648.95(g)(2).

(v) *Research DAS set-aside.* A total of 500 DAS shall be set aside and made available for cooperative research programs as described in paragraph (c) of this section. These DAS shall be deducted from the total number of DAS allocated to all monkfish limited access permit holders, as specified under paragraph (b)(1)(i) of this section. A per vessel deduction shall be determined as follows: Allocated DAS minus the quotient of 500 DAS divided by the total number of limited access permits issued in the previous fishing year. For example, if the DAS allocation equals 40 DAS and there were 750 limited access monkfish permits issued during FY2010, the number of DAS allocated to each vessel during FY2011 would be 40 DAS minus 0.7 (500 DAS divided by 750 permits), or 39.3 DAS.

(2) *Category C, D, F, G, or H limited access monkfish permit holders.* (i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that

equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies. For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 10, and the vessel fished 10 of its 40 monkfish DAS, 10 NE multispecies Category A DAS would also be used. However, after all 10 NE multispecies Category A DAS are used, the vessel may utilize its remaining 30 monkfish DAS to fish for monkfish, without a NE multispecies DAS being used. A vessel holding a Category C, D, F, G, or H limited access monkfish permit may not use a NE multispecies Category B Regular DAS under the NE Multispecies Regular B DAS Program, as specified under § 648.85(b)(6), in order to satisfy the requirement of this paragraph (b)(2)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

* * * * *

(10) *DAS Adjustment for Trip Limit Overage.* Any limited access monkfish vessel fishing on a monkfish DAS may land up to the equivalent of one additional day's worth of its trip limit (*i.e.,* amount of monkfish authorized per DAS) than would otherwise be authorized, provided the vessel, vessel owner, or vessel operator notifies the Regional Administrator of the overage via VMS prior to crossing the VMS demarcation line. If the vessel is not equipped with an operable VMS, the vessel, vessel operator, or owner may notify the Regional Administrator via the call-in system at least 1-hour prior to landing. The monkfish DAS charged to the vessel will then be increased to equal a full 24-hr period plus one minute to account for the trip limit overage. For example, if a vessel has the equivalent of two monkfish DAS trip limits (based on its permit category) on board, but has only been declared into the monkfish DAS program for 15 hr, the vessel, vessel owner, or vessel operator may land fish equal to the two DAS trip limits only if he/she notifies the Regional Administrator of the overage via VMS or the call-in system as described above. In this case, the monkfish DAS charged to the vessel would be adjusted from 15 hr to 24 hr and 1 minute.

* * * * *

3. In § 648.94, paragraphs (a), (b)(1), (b)(2)(i) and (ii), (b)(3)(ii)(A), (b)(4), (c)(1) through (c)(8), and (d)(2) are revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

(a) *General.* Monkfish may be possessed or landed either as heads only, tails only, or in whole form (head on and gutted), or any combination of the three. When any combination of heads, tails, and whole fish are possessed or landed, the possession or landing limit for monkfish shall be based on the tail weight limit applicable to that vessel where all whole monkfish (head on and gutted) are converted to tail weight using the conversion factor of 2.91. For example, whole weight is converted to tail weight by dividing the whole weight by 2.91. Conversely, tail weight is converted to whole weight by multiplying the tail weight by 2.91. The possession or landing limit for monkfish heads shall not exceed 1.91 times the tail weight of fish on board, excluding any whole monkfish. The allowed amount of head weight is determined by multiplying the tail weight by 1.91. For example a vessel possessing 100 lb of tail weight may possess an additional 191 lb of monkfish heads ($100 \times 1.91 = 191$). A vessel may not possess heads only without possessing the amount of tails allowed by using the conversion factor.

(b) * * *

(1) *Vessels fishing under the monkfish DAS program in the NFMA*—(i) *Category A and C vessels.* Limited access monkfish Category A and C vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 1,250 lb (567 kg) tail weight or 3,638 lb (1,650 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(ii) *Category B and D vessels.* Limited access monkfish Category B and D vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 800 lb (363 kg) tail weight or 2,328 lb (1,056 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(2) *Vessels fishing under the monkfish DAS program in the SFMA*—(i) *Category A, C, and G vessels.* Limited access monkfish Category A, C, and G vessels that fish under a monkfish DAS in the SFMA may land up to 550 lb (249 kg) tail weight or 1,601 lb (726 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(ii) *Category B, D, and H vessels.* Limited access monkfish Category B, D, and H vessels that fish under a monkfish DAS in the SFMA may land up to 450 lb (204 kg) tail weight or 1,310 lb (594 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87) of monkfish heads, as described in paragraph (a) of this section.

* * * * *

(3) * * *

(ii) * * *

(A) *Category C, D, and F vessels.* Limited access monkfish Category C, D, or F vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not a monkfish DAS, may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight per DAS if gear other than trawl gear is used at any time during the trip. Category C, D, and F vessels participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

* * * * *

(4) *Category C, D, F, G, or H vessels fishing under the scallop DAS program.* A Category C, D, F, G, or H vessel fishing under a scallop DAS may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based

on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

* * * * *

(c) * * *

(1) *Vessels fishing under a NE multispecies DAS*—(i) *NFMA.* Vessels issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, fishing under a NE multispecies DAS exclusively in the NFMA may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(ii) *SFMA.* If any portion of the trip is fished by a vessel issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category G or H permit, under a NE multispecies DAS in the SFMA, the vessel may land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(2) *Scallop vessels fishing under a scallop DAS.* A scallop vessel issued a monkfish incidental catch (Category E) permit fishing under a scallop DAS, may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(3) *Vessels fishing with large mesh and not fishing under a DAS*—(i) A vessel issued a valid monkfish incidental catch limit (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs with mesh no smaller than specified at § 648.80(a)(3)(i) and (a)(4)(i), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(ii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at § 648.80(b)(2)(i), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA under a Skate Bait Letter of Authorization, as authorized under § 648.322(c), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(iv) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE or MA RMAs west of the MA Exemption Area boundary with mesh no smaller than specified at § 648.104(a)(1) while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, but not to exceed 450 lb (204 kg) tail weight or 1,310 lb (594 kg) whole weight of monkfish, unless that vessel is fishing under a Skate Bait Letter of Authorization in the SNE RMA. Such a vessel is subject to the incidental catch limit specified under paragraph (c)(3)(iii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(4) *Vessels fishing with small mesh and not fishing under a DAS.* A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing with mesh smaller than the mesh size specified by area in paragraph (c)(3) of this section, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land only up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(5) *Small vessels.* A vessel issued a limited access NE multispecies small vessel category permit and a valid monkfish incidental catch (Category E) permit that is less than 30 ft (9.1 m) in length and that elects not to fish under the NE multispecies DAS program, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg)

of tail weight landed, the vessel may land up to 1.91 lb of monkfish heads, as described in paragraph (a) of this section.

(6) *Vessels fishing with handgear.* A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(7) *Vessels fishing with surfclam or ocean quahog dredge gear.* A vessel issued a valid monkfish incidental catch (Category E) permit and a valid surfclam or ocean quahog permit, while fishing exclusively with a hydraulic clam dredge or mahogany quahog dredge, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(8) *Scallop vessels not fishing under a scallop DAS with dredge gear*—(i) *General provisions.* A vessel issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, and also possessing a valid General Category sea scallop permit or a limited access sea scallop vessel not fishing under a scallop DAS, while fishing exclusively with scallop dredge gear as specified in § 648.51(b), may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip, unless otherwise specified in paragraph (c)(8)(ii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(ii) *Limited access scallop vessels fishing in Sea Scallop Access Areas.* A vessel issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, and also possessing a limited access sea scallop permit while fishing exclusively with scallop dredge gear as specified in § 648.51(b), and fishing in one of the established Sea Scallop Access Areas specified under § 648.59, may possess, retain, and land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per day or partial day fished within the boundaries of the Sea Scallop Access Area. Time within the applicable access area, for purposes of determining the incidental catch limit, will be determined through the vessel's VMS unit. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(d) * * *

(2) If a vessel possesses or lands both monkfish tails and whole monkfish, the vessel may land monkfish livers up to 10 percent of the whole weight of monkfish per trip using the following weight ratio:$(0.10) \times [(\text{tail weight} \times 2.91) + (\text{whole fish} \times 1)]$.

Note to paragraph (d)(2): The value 2.91 is the live weight conversion for tails and the value of 1 is the live weight conversion for fish landed in a whole condition.

* * * * *

4. Section 648.96 is revised to read as follows:

§ 648.96 FMP review, specification, and framework adjustment process.

(a) *Annual review and adjustment process.* The NEFMC and MAFMC, the Monkfish Plan Development Team (PDT), and the Monkfish Advisory Panel shall monitor the status of the monkfish fishery and resource.

(1) *Monkfish annual SAFE Report.* The PDT shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the monkfish fishery. The SAFE Report shall be the primary vehicle for the presentation of updated biological and socio-economic information regarding the monkfish fishery. The SAFE report shall provide source data for any adjustments to the management measures that may be needed for the Councils to meet the goals and objectives of the FMP.

(2) *Annual review.* The PDT shall meet at least annually to conduct a review of the monkfish fishery in relation to the goals and objectives specified in the Monkfish FMP, including a review of catch relative to the annual catch targets (ACTs) for each management area. They shall review available data pertaining to discards and landings; DAS and other measures of fishing effort; stock status and fishing mortality rate information, if available; enforcement of and compliance with management measures; and any other relevant information. Based on this review, the PDT shall provide guidance to the NEFMC and MAFMC regarding the need to adjust management measures to better achieve the FMP's goals and objectives. After considering the PDT's guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the annual framework adjustment process specified in paragraph (a)(3) of this section, the in-season framework adjustment process specified in paragraph (b) of this section, or through an amendment to the FMP.

(3) *Annual framework adjustment procedures.* (i) If necessary based on the annual review, the Councils may develop adjustments to management measures to achieve the annual catch target (ACT) for the upcoming fishing year, and may develop other management options to better achieve the goals and objectives of the Monkfish FMP, which may include a preferred option. The Councils must demonstrate through analysis and documentation that any options they develop are expected to meet the goals and objectives of the Monkfish FMP. Additionally, if necessary based on the recommendation of the NEFMC's Scientific and Statistical Committee (SSC), the Councils may recommend measures to revise the ABCs and ACLs for the upcoming fishing year(s) as described in paragraph (c) of this section.

(ii) The range of options developed by the Councils may include any of the management measures in the Monkfish FMP, including, but not limited to: ACTs; closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit

assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; changes to the Northeast Region SBRM (including the CV-based performance standard, fishery stratification, and/or reports) and/or industry-funded observers or observer set-aside programs; changes to the Monkfish Research Set-Aside Program; and other frameworkable measures included in §§ 648.55 and 648.90.

(iii) The Councils shall review the options analyzed by the PDT and other relevant information, consider public comment, and submit a recommendation to the Regional Administrator that meets the Monkfish FMP's objectives, consistent with other applicable law. The Councils' recommendation to the Regional Administrator shall include supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Councils. Management adjustments made to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(A) The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options analyzed by the PDT and any other relevant information, consider public comment, and make a recommendation to the Councils.

(B) If the Councils submit a recommendation that is consistent with other applicable law but does not meet the Monkfish FMP's goals and objectives, the Regional Administrator may adopt any option developed by the Councils and analyzed by the PDT that has not been rejected by either Council, provided such option meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law. If either the NEFMC or MAFMC has rejected all options, then the Regional Administrator may select any measure that has not been rejected by both Councils and that meets the Monkfish FMP's goals and objectives.

(iv) If the Councils submit, on or before December 1, a recommendation to the Regional Administrator after one meeting with each Council, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the **Federal Register** as a proposed rule, or as otherwise authorized under the Administrative Procedure Act. The Councils may instead submit their recommendation on or before February 1, if they choose to follow the framework process outlined in paragraph (b) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs with the Councils' recommendation the recommended management measures may be published as a proposed rule or a final rule, in accordance with the APA. If the effective date of a final rule to implement the recommended measures falls after the start of the fishing year, fishing may continue under the existing regulations, but, any DAS used by a vessel on or after the start of a fishing year shall be counted against any DAS allocation the vessel ultimately receives for that fishing year.

(v) Following publication of a proposed rule and after receiving public comment, if the Regional Administrator concurs in the Councils' recommendation, a final rule, if possible, shall be published in the **Federal Register** prior to the start of the next fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the goals and objectives of the Monkfish FMP, the Regional Administrator may implement through rulemaking in accordance with the APA one of the options reviewed and not rejected by either Council, provided the option meets the goals and objectives of the Monkfish FMP, and is consistent with other applicable law.

(b) *Within-season management action.* At any time, the Councils or the Joint Monkfish Oversight Committee (subject to the approval of the Councils' Chairmen) may initiate action to add or adjust management measures if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP.

(1) *In-season Framework adjustment procedures.* (i) Framework adjustments shall require at least one initial meeting of the Joint Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two final Council meetings, one at each Council. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to the first of the two final Council meetings. Framework adjustments and amendments to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(ii) Recommended adjustments to management measures must come from the categories specified under paragraph (a)(3)(i) of this section, including specification of ABC and ACLs, if necessary.

(2) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Adjustments for gear conflicts.* The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(g) and (h).

(4) *Action by NMFS.* (i) If the Regional Administrator approves the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3)(i) of this section, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of the recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(ii) If the Regional Administrator concurs with the Councils' recommendation and determines that the recommended management

measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(c) *Process for setting ABCs and ACLs.* (1) The Councils or the PDT may develop options for setting ABC, ACL, and OFL for each monkfish stock, as necessary, as part of the annual review and adjustment process specified in paragraph (a) of this section, or as otherwise deemed necessary following the in-season adjustment process specified in paragraph (b) of this section. These options shall be submitted to the SSC for consideration. The Councils or the PDT may recommend to the SSC that ABC, ACL, and OFL are specified for each monkfish stock for multiple years as determined necessary to best align management with the stock assessment process for this fishery.

(i) *ABC recommendation.* The Councils or the PDT shall calculate ABC values for each monkfish stock based on the ABC control rule established in the FMP. These calculations shall be reviewed by the SSC, guided by terms of reference developed by the Councils. The SSC shall either concur with these ABC calculations, or provide alternative recommendations for each stock and describe the elements of scientific uncertainty used to develop its recommendations. The SSC may also consider other related issues specified in the terms of reference developed by the Councils, including, but not limited to, OFLs, ACLs, and management uncertainty.

(ii) *ACL recommendations.* The Councils shall develop ACL recommendations based upon the ABCs recommended by the SSC. The ACL recommendations shall be specified based upon total catch for each stock (*i.e.,* including landings and discards), if that information is available. The Councils shall describe the steps involved with calculating their recommended ACLs, including whether ACLs have been exceeded in recent years. The Councils shall adopt ACLs that are equal to or lower than the ABCs recommended by the SSC.

(iii) *Timing.* The Councils shall develop and approve any recommendations for ABCs and ACLs prior to December 31, to the extent possible. Once the Councils have approved the recommended ABCs and ACLs, they shall be submitted to NMFS as part of an annual framework adjustment or in-season framework adjustment, as described in paragraphs (a) and (b) of this section, along with any necessary analysis required by applicable law. After receipt of the Councils' recommendation for ACLs, NMFS shall review the Councils' decision and, if consistent with applicable law, implement the ACLs in accordance with the Administrative Procedure Act.

(d) *Accountability Measures (AMs)*—(1) *Specification of ACTs.* Through the annual review process described in paragraph (a) of this section, or as otherwise determined necessary, the Councils shall specify ACTs for each management area that are set sufficiently below the ACL to account for management uncertainty and prevent the ACL from being exceeded. The ACTs established for each management area shall be the basis for setting management measures (DAS and trip limits), after accounting for incidental catch in non-directed fisheries and discards in all fisheries.

(2) *ACL overages and adjustments*—(i) *Council action.* The Councils shall revise the ACT for a monkfish stock if it is determined that the ACL was exceeded in any given year, based upon, but not limited to, available landings and discard information. The ACL overage shall be deducted from the ACT for the corresponding monkfish stock on a pound-for-pound basis. The revised ACT and corresponding management measures (DAS and trip limits) shall be implemented through either the annual or in-season framework adjustment process, specified in paragraphs (a) and (b) of this section, in the second fishing year following the fishing year in which the ACL overage occurred.

(ii) *NMFS action.* If the Councils fail to take appropriate action to correct an ACL overage consistent with paragraph (d)(1)(i) of this section, the Regional Administrator shall implement the required adjustment, as described in paragraph (d)(2)(i) of this section, including the specification of DAS and trip limits using a formulaic approach developed by the PDT, in accordance with the Administrative Procedure Act and other applicable law. Notification of the proposed ACL revision and DAS and/or trip limit adjustments shall be published in the **Federal Register** no later than January 1, if possible, for implementation on May 1 of the second fishing year following the fishing year in which the ACL overage occurred.

(d) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

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