authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Section 305(c) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)) provides the legal authority for the promulgation of emergency regulations.

Background

At its September 2012 meeting, the Council requested that NMFS promulgate emergency regulations to increase the commercial ACL for yellowtail snapper based on the results of the May 2012 stock assessment conducted by the Florida Fish and Wildlife Conservation Commission's Fish and Wildlife Research Institute (FWRI) which indicated yellowtail snapper are not overfished or experiencing overfishing. Results of the stock assessment suggested that the acceptable biological catch (ABC) could increase, which could allow an increase in the commercial ACL resulting in positive social and economic benefits to commercial fishermen and dealers. The assessment was reviewed by the Council's Scientific and Statistical Committee (SSC) on October 10, 2012. Based on the stock assessment conducted by the FWRI, the Council's request and the SSC's ABC recommendation, and the current commercial sector's allocation, NMFS promulgated a temporary rule on November 7, 2012, to increase the commercial ACL for yellowtail snapper from 1,142,589 lb (518,270 kg) to 1,596,510 lb (724,165 kg), round weight (77 FR 66744). The temporary rule was implemented in time to avoid triggering the commercial accountability measure (AM) in 2012, which would have unnecessarily prohibited commercial harvest and possession of yellowtail snapper in the South Atlantic. The temporary rule was determined to be necessary to preserve a significant economic opportunity that otherwise might be foregone and to help achieve OY for the fishery.

The temporary rule published on November 7, 2012, will expire on May 6, 2013. The Council has developed Regulatory Amendment 15 to the FMP to implement the increased commercial ACL for yellowtail snapper on a permanent basis. However, this regulatory amendment, if implemented, will not be effective before the 180-day temporary rule expires. Therefore, the Council requested an extension of the temporary rule at its March 2013 Council meeting, to continue the increase of the commercial ACL for yellowtail snapper while the rulemaking for Regulatory Amendment 15 is completed. This temporary rule extension will ensure that the commercial ACL for yellowtail snapper is based on the best scientific information available and will help to achieve OY for yellowtail snapper while avoiding an unnecessary closure for the commercial sector.

Comments and Responses

Section 305(c)(3)(B) of the Magnuson-Stevens Act authorizes the extension of an emergency regulation for up to 186 days, provided that the public has had an opportunity to comment on the initial emergency regulation and the Council is actively preparing a plan amendment or proposed regulations to address the emergency on a permanent basis. NMFS solicited public comment on the November 7, 2012, temporary rule, and received one comment from a fisheries association that supported the temporary rule, development of Regulatory Amendment 15, and the extension of the temporary rule. No other comments were received.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Regional Administrator, Southeast Region, NMFS, has determined that the extension of this temporary rule is necessary to preserve a significant economic opportunity for the commercial yellowtail snapper component of the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws. The Council developed Regulatory Amendment 15 to the FMP to establish the increase in the commercial ACL for yellowtail snapper on a permanent basis and has submitted the amendment to NMFS.

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

This temporary rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and comment.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this temporary rule extension. Providing prior notice and opportunity for public comment would be contrary to the public interest. Failure to extend the increase in the commercial ACL for yellowtail snapper would result in the commercial ACL not being based on the best scientific information available, which would be contrary to National Standard 2 of the Magnuson-Stevens Act. Failure to extend the temporary rule may also result in the commercial sector being unnecessarily prohibited from harvesting and possessing yellowtail snapper in 2013 due to a closure, which would create adverse economic impacts for those dependent upon the commercial harvest of yellowtail snapper, especially in the Florida Keys. Extension of the temporary rule would allow for continued commercial harvest under the increased commercial ACL while the emergency regulations are being addressed on a permanent basis through Regulatory Amendment 15 to the FMP. This extension will give fishermen the opportunity to achieve OY for yellowtail snapper, in accordance with National Standard 1 of the Magnuson-Stevens Act.

For the reasons listed above, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

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

Dated: April 24, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–10153 Filed 4–29–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121126649–3347–02]

RIN 0648–BC79

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Emergency Action

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

ACTION: Emergency temporary rule; interim measures; request for comments.

SUMMARY: NMFS implements a temporary emergency action that suspends existing monkfish possession limits for vessels issued both a Federal limited access Northeast multispecies permit and a limited access monkfish Category C or D permit that are fishing under a monkfish day-at-sea in the monkfish Northern Fishery Management

Area. This action is necessary to help mitigate expected adverse economic and social harm resulting from substantial reductions to the 2013 annual catch limits for several stocks managed under the Northeast Multispecies Fishery Management Plan. The intent is to provide additional fishing opportunities to vessels affected by reductions to groundfish catch limits, without resulting in overfishing monkfish within the Northern or Southern Fishery Management Areas.

DATES: This rule is effective at 0001 hr on May 1, 2013, through October 27, 2013. Comments must be received by May 30, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0240, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0240,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276. Mark the outside of the envelope: ''Comments on Monkfish Emergency Action.''
- *Fax:* (978) 281–9135; Attn: Douglas Christel.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which consists of the Initial Regulatory Flexibility Analysis (IRFA), public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. Copies of the supporting biological, economic, and social impact analysis for this action are contained in the environmental assessment (EA) prepared for this rule, and may be found at the following Internet address: *http://www.nero.noaa.gov/regs/2013/February/13monkerea.pdf.* Copies of the small entity compliance guide are available from the Regional Administrator, NMFS, Northeast Regional Office, at the address noted above.

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

NMFS developed a proposed rule to implement emergency measures in the monkfish fishery based on a request for emergency action by the New England Fishery Management Council (NEFMC). The proposed rule published in the **Federal Register** on February 25, 2013 (78 FR 12708). Public comments were accepted through March 12, 2013. A full discussion of the background and justification for emergency measures was presented in the preamble to the proposed rule and the EA prepared for this action (see **ADDRESSES**), and is not repeated here. In summary, the combined effect of several issues facing the Northeast multispecies (groundfish) fishery for fishing year (FY) 2013, including substantial reductions in annual catch limits (ACLs) for several stocks, present recently discovered circumstances that would likely cause serious management problems and result in substantial economic and social harm for the groundfish and monkfish fisheries and associated communities. Consistent with section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and NMFS guidelines for the use of emergency actions, as discussed in the proposed rule, this interim final rule implements emergency measures that provide additional fishing opportunities to help mitigate expected substantial adverse economic and social harm resulting from reduced groundfish ACLs in FY 2013, without significantly increasing the risk of overfishing monkfish.

Approved Management Measures

The following describes the measures implemented by this interim final rule. NMFS may renew, modify, or extend these measures after October 27, 2013 for up to an additional 185 days (i.e., through the end of FY 2013 on April 30, 2014) through notice consistent with the Administrative Procedure Act. If NMFS does not renew or modify these measures, the Northern Fishery Management Area (NFMA) monkfish possession limits implemented by Framework Adjustment (FW) 7 to the Monkfish Fishery Management Plan (FMP) on October 26, 2011 (76 FR 66192), would remain in effect for the rest of FY 2013.

1. Monkfish Possession Limits in the NFMA

This emergency action suspends existing monkfish possession limits for vessels issued a Federal limited access monkfish Category C or D permit (i.e., those also issued a Federal limited access NE multispecies permit) that are fishing under a monkfish day-at-sea (DAS) in the NFMA during FY 2013. A vessel operator that starts a trip under a groundfish DAS and then declares that he/she is fishing under a monkfish DAS prior to returning to port is also exempted from the monkfish possession limits. Existing monkfish possession limits for vessels issued a limited access monkfish Category A or B permit and fishing under only a monkfish DAS; vessels issued a limited access monkfish Category C or D permit fishing that are not fishing under a monkfish DAS; or vessels issued an open access monkfish Category E permit (i.e., vessels that catch monkfish while targeting other fisheries) remain the same, as specified in Table 1. In addition, the overfishing level, acceptable biological catch level, ACL, ACT, and TAL remain 19,557 mt, 7,592 mt, 6,567 mt, and 5,854 mt, respectively, as implemented in either Amendment 5 (May 25, 2011; 76 FR 30265) or FW 7 to the Monkfish FMP.

TABLE 1—MONKFISH POSSESSION LIMITS IN THE NFMA FOR 2013

Groundfish sector participation status	DAS type	Monkfish permit category	Possession limit (tail weight)
Non-sector Vessels (Monkfish-only or Common Pool Groundfish Vessels).	No DAS	A, B, or E	Up to 5% of total weight of fish onboard; or 50 lb (23 kg) per day, up to 150 lb (68 kg) per trip based on gear used.
	Monk	A	1,250 lb (567 kg)/DAS.
		B	600 lb (272 kg)/DAS.
	NE Mults A DAS only	E	Up to 25% of total weight of fish onboard, not to exceed 300 lb (136 kg).
		C or D	Up to 25% of total weight of fish onboard, not to exceed 300 lb (136 kg).
	NE Mults A & Monk DAS	C or D	Unlimited.
Sector	Non-DAS	E, C, or D	Up to 5% of total weight of fish onboard; or 50 lb (23 kg) per day, up to 150 lb (68 kg) per trip based on gear used.
	NE Mults A DAS only	E	Up to 25% of total weight of fish onboard, not to exceed 300 lb (136 kg).
		C or D	Up to 25% of total weight of fish onboard, not to exceed 300 lb (136 kg).
	NE Mults A & Monk DAS	C or D	Unlimited.

These measures differ from those requested by the NEFMC in two ways. First, the suspension of existing monkfish possession limits applies to both groundfish sector and common pool vessels instead of just sector vessels. Suspending monkfish possession limits for both groundfish sector and common pool vessels is necessary to ensure that the emergency measures fairly and equitably allocate fishing privileges among relevant affected entities (i.e., those affected by substantial reductions in the FY 2013 groundfish ACLs), consistent with National Standard 4 of the Magnuson-Stevens Act and the intended purpose and need for this action. Second, this action exempts only monkfish Category C or D vessels fishing under a monkfish DAS in the NFMA from the existing monkfish possession limits. This is different than the measures originally requested by the NEFMC and proposed for this action in that it would not exempt monkfish Category C or D vessels fishing under a groundfish DAS in the NFMA from the existing monkfish possession limits. We made this latter change in response to public comments to ensure that potential effort shifts do not result in unanticipated adverse impacts to the Southern Fishery Management Area (SFMA) monkfish resource or associated fishing communities.

Upon further consideration, we concluded that the originally proposed emergency measures could substantially increase the effective effort on monkfish by inadvertently and unintentionally creating incentives for vessels to fish for monkfish using readily available groundfish DAS in the NFMA, and then using their allocated monkfish DAS to fish for monkfish in the SFMA. Under current regulations, a vessel may land more than the incidental amount of monkfish only if fishing under a groundfish or monkfish DAS. Because sectors are not required to use a groundfish DAS when fishing for groundfish stocks, groundfish DAS are readily available, and can be easily acquired for little cost, particularly in the NFMA. In conjunction with the fact that a majority of monkfish Category C and D vessels are participating in sectors during recent FYs, the proposed measures could create incentives for such vessels to acquire and use a large supply of groundfish DAS to catch unlimited amounts of monkfish without using a monkfish DAS in the NFMA. Such vessels could then save their monkfish DAS to fish in areas of the SFMA where groundfish DAS are not required to be used. Thus, fishing effort on monkfish could be substantially increased in both the NFMA and SFMA under the proposed measures. This is substantially different than past fishing practices, and could possibly result in monkfish landings that exceed the SFMA monkfish total allowable landings (TAL) amount during FY 2013. Because the Monkfish FMP is jointly managed by the NEFMC and the Mid-Atlantic Fishery Management Council (MAFMC), the final measures implemented by this interim final rule reflect a compromise between the interests expressed by each Council by providing for greater opportunities to land monkfish in the NFMA, as advocated by the NEFMC, and helping minimize the potential effort shifts into the SFMA, as suggested by the MAFMC.

We expect these final measures to more closely achieve, but not exceed, the FY 2013 TAL for monkfish in the NFMA, resulting in monkfish landings of approximately 5,336 mt during FY 2013, or 91 percent of the FY 2013 monkfish TAL in the NFMA. This represents an increase of 401,873 lb (182,286 kg) of monkfish landings compared to landings expected under the current possession limits.

2. Regional Administrator Authority To Reinstate Existing Monkfish Possession Limits

This action authorizes the Regional Administrator to reinstate existing monkfish possession limits for limited access monkfish Category C and D vessels fishing under a monkfish DAS in the NFMA at any time through October 27, 2013 if available data indicate that the NFMA monkfish TAL or ACT may be exceeded during FY 2013. If such trip limits are reinstated, monkfish Category C and D vessels fishing in the NFMA under a monkfish DAS would be subject to monkfish possession limits of 1,250 lb (567 kg) tail weight and 600 lb (272 kg) tail weight per DAS, respectively, for the remainder of FY 2013. This discretion is necessary to ensure that unexpected changes in fishing behavior in response to this emergency action do not cause monkfish landings or catch, when discards are included, to exceed the FY 2013 NFMA monkfish TAL or annual catch target (ACT), respectively, and result in overfishing for NFMA monkfish. Any reinstatement of monkfish possession limits in the NFMA would be implemented consistent with the Administrative Procedure Act.

Comments and Responses

Twenty-five comments were received during the comment period on the proposed rule for emergency action from 14 individuals, 5 commercial fishing organizations, 2 state resource management agencies (Massachusetts Division of Marine Fisheries (DMF) and the Maine Department of Marine Resources), 1 seafood processor group, 1 conservation organization, 1 fish dealer, and the MAFMC. One other comment was submitted via fax, but was unreadable because much of the middle of the comment was obscured by a black streak, leaving only the margins of the comment readable. Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are addressed in this preamble. Overall, 15 commenters supported the proposed action, while 8 opposed it (the MAFMC and 2 vessel owners strongly opposed this action), with 2 other commenters not expressing a particular position on the proposed action.

Comment 1: Four commenters, including the MA DMF and two commercial fishing groups, suggest that the proposed action would not adversely affect the NFMA monkfish stock. Several other commenters highlighted that monkfish landings from the NFMA have been well below the NFMA ACL for several years, suggesting that the stock could accommodate additional landings without exceeding the FY 2013 TAL. The ME DMR agreed with our assertion in the EA that additional effort is adequately constrained by existing management measures in either the monkfish or groundfish fisheries. One commercial fishing group offered that there are fewer groundfish vessels operating in the NFMA following several years of severe restrictions of groundfish effort and reductions in ACLs, suggesting that this would reduce the likelihood that the proposed action would harm the monkfish resource. One dealer noted that NFMA monkfish is a robust resource that is not overfished or subject to overfishing, while another observed that there are sufficient buffers between the ACT and the allowable biological catch (ABC) level to prevent the proposed measures from harming the stock.

Response: We recognize that the most recent monkfish stock assessment characterizes NFMA monkfish stock as currently not overfished or subject to overfishing, and that the fishery has not fully harvested the NFMA monkfish TAL in recent years. We also agree that there are sufficient buffers to prevent overfishing even if the FY 2013 TAL is fully harvested. As analyzed in the EA prepared to support this action, neither the proposed action, nor the measures implemented by this final rule (identified as Alternative 1 in the EA), would likely result in landings exceeding the FY 2013 NFMA monkfish TAL based on recent fishing operations and other existing constraints in either the groundfish or monkfish fisheries. While fishing behavior during FY 2013 may be different than that observed in recent years, this interim final rule provides the Regional Administrator with the authority to reinstate existing monkfish possession limits at any time during FY 2013 if available data suggest that landings would exceed the FY 2013 NMFA monkfish TAL before the end of the FY. We will monitor monkfish landings throughout FY 2013, and will reinstate existing monkfish possession limits if available data suggest that the FY 2013 NFMA monkfish TAL would be exceeded before the end of the FY. Thus, although we decided it was necessary to not apply the suspension of monkfish possession limits to monkfish Category C and D vessels fishing under a groundfish DAS in the NFMA during FY 2013, as further explained in the next comment, we agree that neither the proposed action, nor the measures implemented by this interim final rule, would adversely affect the NFMA monkfish stock or result in overfishing throughout the duration of this action.

Comment 2: Several commenters, including the MA DMF and ME DMR, were concerned that the proposed action may result in redirected effort, or a shift in fishing patterns. Commenters were concerned not only about impacts to monkfish within the NFMA, but also about impacts to SFMA monkfish. The MAFMC, one commercial fishing group, one seafood processing group, and one vessel owner suggested that the proposed measures may result in significant directed effort on monkfish in the NFMA that could deplete the stock or cause it to become overfished. That vessel owner suggested that sector vessels will fish close to the NFMA/SFMA boundary to harvest monkfish while minimizing groundfish bycatch, but that such activity would result in substantial impacts to the monkfish resource in the SFMA based on the likelihood that monkfish is only one biological stock instead of two. The MAFMC and two other vessel owners agreed, with the MAFMC asserting that overfishing monkfish in the NFMA would negatively affect the SFMA stock, while one vessel owner stated that the proposed action would destabilize the SFMA monkfish fishery. One commercial fishing group and another vessel owner stated that the proposed measures should not inadvertently increase effort in the SFMA. One individual questioned whether vessels that generally fish in the SFMA would move into the NFMA to fish for monkfish, and one commercial fishery group asked how NMFS would monitor and enforce area declarations, since vessels do not have to permanently declare into either area.

Response: We are also concerned about the potential for this action to change fishing patterns during FY 2013 in both the NFMA and the SFMA. That is why we proposed to give the Regional Administrator the authority to reinstate existing monkfish possession limits if available data suggest that the FY 2013 NFMA monkfish TAL may be exceeded. We contend that this would limit any overage of the TAL and, thus, overfishing, given that the TAL was set based on the best available scientific information, and that there is sufficient buffer between the TAL and the overfishing level to prevent overfishing from occurring on this stock, as specified by the NEFMC's Scientific and Statistical Committee (SSC) recommendations in 2010 as part of FW 7 to the Monkfish FMP.

Upon further consideration of public comment, we agree that the proposed action could provide incentives for vessels to change fishing behavior and shift effort in a manner that could increase the risk of overfishing monkfish in the SFMA. In particular, we concluded that the proposed action could encourage vessels to use cheap and readily-available groundfish DAS (particularly for sector vessels) to target monkfish in the NMFA, and save their allocated monkfish DAS to later target monkfish in the SFMA. To prevent this from occurring, this interim final rule exempts only monkfish Category C or D vessels using a monkfish DAS in the NFMA from the monkfish possession limits. Thus, fewer monkfish DAS are expected to be available to fish for monkfish in the SFMA as a result of the change in this final rule, because the monkfish DAS would be used to land more monkfish in the NFMA. This would reduce the potential for vessels to shift monkfish effort into the SFMA compared to the proposed action. Thus, measures implemented by this interim final rule provide greater control over resulting monkfish landings during FY 2013, and are likely to be more effective than the proposed measures at reducing the risk that either the NFMA or SFMA monkfish TALs will be exceeded during

FY 2013 due to unanticipated effort shifts.

Existing regulations enable vessels to use monkfish DAS in both the NFMA and the SFMA during the same fishing year. These interim final measures provide incentives to use those DAS in the NFMA during FY 2013 by requiring monkfish Category C and D vessels to use monkfish to be exempt from current monkfish possession limits in the NFMA. In contrast, the proposed measures provided no incentive to use monkfish DAS in the NFMA, and as noted above, may actually provide incentives for vessels to use readily available groundfish DAS to target monkfish in the NFMA and save all of their monkfish DAS to fish for monkfish in the SFMA as a means to maximize revenue from monkfish fishing opportunities during FY 2013. To have granted the Regional Administrator discretion to revise the monkfish possession limits in the SFMA in a manner similar to the authority to reinstate existing monkfish possession limits in the NFMA through this interim final rule would go beyond the purpose and need specified for this action. The purpose of this emergency action is to mitigate adverse impacts on groundfish vessels operating in the NFMA, and not to potentially create adverse impacts on the SFMA monkfish fishery because of effort shifts that otherwise would not have occurred. With the changes in measures implemented by this interim final rule, the risk that such impacts would occur has been reduced. Accordingly, the final measures reflect a compromise between the interests expressed by each Council by providing for greater opportunities to land monkfish in the NFMA, as advocated by the NEFMC, and helping minimize the potential effort shifts and into the SFMA and resulting impacts to the SFMA monkfish fishery, advocated by the MAFMC.

We believe that existing regulations adequately address monitoring and enforcement concerns raised by the commenters. Any vessel that fishes any part of a trip in the SFMA will continue to be subject to the SFMA monkfish possession limits, with any monkfish DAS used on such a trip counting against the 28 monkfish DAS limit that each vessel may use in the SFMA during FY 2013. Current monkfish regulations only require vessel operators to declare whether the vessel will fish any part of a particular trip in the SFMA via the vessel monitoring system (VMS) or interactive voice response (IVR) or call-in system. Alternatively, a vessel can obtain a letter of authorization, stating that the vessel will fish in the NFMA for a specified period of time.

We will continue to monitor and enforce vessel activity using existing area-declaration requirements, including VMS and IVR declarations, landings by areas reported on vessel trip reports (VTRs, or logbooks) and dealer reports, and other available data. Because all monkfish Category C and D vessels are also issued limited access NE multispecies permits, such vessels are required to submit VTRs on a weekly basis. In addition, because most monkfish Category C and D vessels are participating in groundfish sectors, we will also have weekly sector catch reports to document vessel activity and associated landings. Finally, since all groundfish vessels must use VMS, hourly positional data and intended vessel activity declarations will be available on a real-time basis for each trip. Collectively, these data sources provide the information necessary to characterize vessel operations and assist in monitoring monkfish landings during FY 2013.

Comment 3: Two vessel owners were concerned that the proposed measures would put additional pressure on other stocks in both New England and in the Mid-Atlantic, while one commercial fishing group did not want the proposed measures to deplete another species.

Response: To the extent possible, we have attempted to minimize the potential for effort shifts to increase fishing pressure on monkfish or other stocks throughout the Northeast, as noted in the response to Comment 2. Vessels will still be subject to existing regulations in other fisheries, including effort controls such as DAS, possession limits, minimum mesh size requirements, and hard quotas and area closures, to ensure that ACLs are not exceeded and that overfishing does not occur on any species, as required by the Magnuson-Stevens Act. Therefore, the measures implemented by this interim final rule, in addition to existing measures in other fisheries, should ensure that other species are not depleted.

Comment 4: Four commenters, including the MA DMF, an environmental group, one commercial fishing group, and one vessel owner were concerned that vessels may use additional gillnet gear and soak their nets longer, which could increase interactions with protected resources and trigger additional management measures that could adversely impact the monkfish fishery, particularly in the SFMA. Although one commercial fishing group supported the conclusions of the analysis of impacts on protected species summarized in the EA prepared for this action, the environmental group disagreed, suggesting that the analysis in the EA may have minimized the impacts on marine mammals. The environmental group contends that it is uncertain whether existing groundfish measures will prevent effort increases in the monkfish fishery. In addition, it contends that vessels often do not comply with pinger requirements to deter harbor porpoise bycatch, and that the North Atlantic right whale biological opinion specifically prohibits any takes of North Atlantic right whales, even for emergency actions implemented for only 1 year. This group also notes that humpback whales are often entangled by gillnet gear, and suggested that the permitted level of mortality on humpback whales as a result of interactions with fishing gear may have already been met or exceeded, and may warrant re-consultation under the Endangered Species Act (ESA).

Response: As highlighted in the EA prepared for this action, gillnet gear is responsible for only a small amount (16–30 percent since 2000) of monkfish landings in the NFMA in recent years. Further, groundfish and monkfish gillnet vessels are still subject to net limits and DAS allocations, and cannot greatly expand gillnet effort during FY 2013. Although we acknowledge that gillnet use and soak duration may increase to some degree, because no additional information was provided to change that perspective, we still contend that it is unlikely that gillnet gear will become a substantially greater source of monkfish landings in the NFMA as a result of this action.

Vessels using gillnet gear are subject to existing regulations developed to minimize interactions with protected species, especially marine mammals, including time and area closures for gillnets, and requirements to use pingers and weak links on gillnet gear. Existing measures attempt to proactively control fishing effort, and implement reactive measures should take (interactions with fishing gear) or mortality targets be exceeded. When complied with, these measures can be effective in reducing interactions with marine mammals. If they are not complied with, additional management measures may be necessary to prevent excessive takes of such species, as required by the ESA. Reduced groundfish ACLs during FY 2013, reductions in the number of active monkfish and groundfish vessels during recent years, and the ability of the Regional Administrator to reinstate monkfish possession limits as part of this action may limit the potential increase in fishing effort by some

vessels during FY 2013. These measures, in conjunction with a series of recent groundfish management actions that have reduced the overall fishing effort in the NFMA, make it unlikely that gillnet effort or interactions marine mammals under either the proposed action or measures implemented by this interim final rule will increase beyond levels observed in recent years. Thus, we contend that this interim final rule will have a negligible impact on protected species during FY 2013, and should not trigger any additional restrictions, provided vessels comply with existing regulations.

The information on humpback whale takes cited by the environmental group includes news articles, personal communication, and a draft marine mammal stock assessment report. While the final stock assessment report was released on April 3, 2013, that report includes takes from multiple sources in multiple fisheries, including those outside the GOM and in Canadian waters, and are neither specific to the monkfish fishery nor the proposed emergency action. No additional scientific information that would more clearly illustrate the potential impact of the proposed action on marine mammals in general, or harbor porpoises or humpback whales specifically, was provided by the group in its comment. When developing management measures, we must rely on the best available scientific information, as required by National Standard 2 of the Magnuson-Stevens Act, and cannot rely upon draft reports, news articles, personal communications, or information that is not germane to the proposed action as the basis for such measures. The information used to analyze the impact of the proposed action represents the best scientific information available at this time. Staff in the NMFS Northeast Regional Office and the Northeast Fisheries Science Center (with expertise on marine mammal interactions) reviewed this analysis, and supported its conclusions. Therefore, we disagree that the EA prepared for this action inappropriately minimized the likely impact on marine mammals, or that re-consultation under the ESA is necessary for humpback whales at this time. We will continue to monitor the takes of marine mammals, and will take any action required under the ESA once available scientific information warrants such action.

Comment 5: Three vessel owners and one environmental group noted that the current measures do not seem to be constraining current NFMA vessels, yet the yearly TAL is still not being caught. They suggest that this is caused by a lack of available monkfish in the NFMA, and question the need to eliminate existing monkfish possession limits under this emergency action. The vessel owners also question the accuracy of the latest monkfish stock assessment, while two owners drew comparisons to recent groundfish stock assessments that seemed to reverse the optimistic conclusions of the previous stock assessment. The MAFMC, the seafood processing group, and one other vessel owner agreed, highlighting the uncertainty of the latest monkfish stock assessment as a reason not to implement this emergency action. Two other vessel owners and one dealer disagreed, stating that the NFMA monkfish stock is healthy and not overfished or subject to overfishing, with one commercial fishing group stating that the one-stock hypothesis is equivocal, with recent recruitment patterns still supporting the two-stock hypothesis. Two vessel owners recommended that NMFS delay the implementation of the emergency action until the next monkfish stock assessment can be completed.

Response: We recognize that most monkfish vessels do not use their full allocation of monkfish DAS in the NFMA, and that existing monkfish possession limits are not limiting for a majority of vessels operating in the NFMA. However, the EA notes that there is evidence that existing monkfish possession limits are restrictive for some vessels (see Figures 8, 9, and 12 in the EA supporting this action). Analysis of the alternatives considered for this action suggests that suspending existing possession limits would reduce discards, increase landings without exceeding the FY 2013 NFMA monkfish TAL, and provide additional fishing revenue to affected vessels consistent with the objectives of the Monkfish FMP and the Magnuson-Stevens Act. Thus, this action is expected to help mitigate adverse impacts in the groundfish fishery.

The latest monkfish stock assessment review (Stock Assessment Workshop (SAW) 50 in 2010) continued to treat monkfish as two separate stocks, reflecting the distinct monkfish management units. However, the assessment noted that information on growth, maturity, and genetics provide some preliminary evidence that the monkfish resource is a unit stock. Recent tagging studies have shown monkfish movement from the NFMA to the SFMA, although a lack of return movement to the NFMA may be an artifact of the timing and location of tag releases. The assessment, however, highlighted the fact that recruitment patterns remain different between the two areas (one of the reasons offered for treating the stocks separately in earlier assessments). Due to indications that the northern and southern stocks may not be distinct, a model was run that treated monkfish as one stock. However, that model was not reviewed or accepted by the Stock Assessment Review Committee (SARC). The SSC reviewed SAW 50 and accepted it as the best available scientific information regarding monkfish stocks. Accordingly, we will continue to assess monkfish as two separate stocks until further scientific information concludes otherwise.

SAW 50 states that ''catch rates may not reflect patterns of abundance,'' because catch rates are influenced by changes to management measures, and that changes in data collections and uncertainty in defining a targeted versus an incidental monkfish trip make evaluating trends in catch rates difficult. Thus, catch per unit effort was not used in the model runs for SAW 50. The report for SAW 50 highlights the fact that catch rates on trips with fishery observers declined in the NFMA during 2003–2007, as the strong 1999 year class passed through the fishery. It also acknowledged that there was a lot of uncertainty with the status of monkfish, including a retrospective pattern that underestimated fishing mortality and overestimated biomass. Nonetheless, the SARC concluded that SAW 50 represents the best available scientific information and that NFMA monkfish was not overfished nor subject to overfishing as of FY 2009. This conclusion was confirmed for FY 2013 by the SSC's review of SAW 50 during the development of NFMA monkfish ACL recommendations as part of FW 7.

The measures implemented by this interim final rule are based on the best available scientific information from SAW 50, as required by National Standard 2 of the Magnuson-Stevens Act. The most recent monkfish stock assessment occurred on April 8–9, 2013, with final results expected sometime in May. Because the results of this next stock assessment will be available after the start of the FY, it would delay any benefits associated with this action, and would prevent affected vessels from benefitting from additional fishing opportunities and potential sources of additional revenue necessary to help mitigate the impacts of reduced groundfish ACLs. Such a delay would be contrary to the purpose and need for this action. Accordingly, we will review the results of the next monkfish assessment when determining whether to reinstate existing monkfish possession limits or continue this

emergency action for the remainder of FY 2013.

Comment 6: Thirteen commenters indicated that the proposed action provides alternative fishing opportunities that will help augment groundfish fishing income for vessels adversely impacted by groundfish quota reductions during FY 2013. One dealer commented that groundfish vessels need additional fishing opportunities to remain viable and to support local processors and associated infrastructure. One industry group suggested that we must improve the sustainable utilization of monkfish in the NFMA due to the significant overlap of vessel participation between the monkfish and groundfish fisheries, while another group noted that the proposed action provides greater flexibility in planning trips.

Response: We agree that the proposed action would provide additional fishing opportunities and potential fishing revenue for affected groundfish vessels to help mitigate the impacts of recent effort reductions on the groundfish fishery and associated communities as much as possible. Although the measures implemented by this interim final rule would not provide as much operational flexibility or potential fishing revenue as the proposed action in order to address potential effort shifts into the SFMA, our analysis confirms that affected vessels would still benefit from this final action, and would likely realize upwards of $490,000 in additional fishing revenue from monkfish landings alone, compared to operating under the current monkfish possession limits. By allowing the monkfish fishery to fully harvest, but not exceed the FY 2013 NFMA monkfish TAL, this action attempts to better provide for the optimum utilization of the monkfish resource and the continued participation of vessels and associated fishing communities in the fishery, while minimizing the risks of adversely affecting the fishery due to unexpected shifts in fishing effort during FY 2013.

Comment 7: Two dealers asserted that the proposed action would ensure a steady supply of fresh fish to consumers, helping to preserve the availability of fresh wild-caught fish to customers given that reductions in groundfish ACLs will reduce the supply of fresh fish to markets.

Response: We agree that both the proposed action and the measures implemented by this interim final rule will increase the fishery's ability to provide a steady year-round supply of fresh monkfish to the market that could help compensate for reduced availability of groundfish in 2013.

Comment 8: Two individuals, the ME DMR, and one commercial fishing group stated that the proposed action would convert monkfish discards into landings, and reduce discards overall. One commenter suggested that the monkfish fishery should consider implementing 100-percent retention in the future to reduce discards even further.

Response: We agree that the proposed action and the measures implemented by this interim final rule may reduce discards by converting them into landings. Both the NEFMC and MAFMC could consider full retention requirements in a future action.

Comment 9: One commercial fishing group noted that the proposed action mirrors regulations that were in effect for the NFMA during the first few years following the implementation of the FMP. The group noted that, during those years, the monkfish target TAC amounts for the NFMA were not exceeded.

Response: We agree that the proposed action is similar to previous measures during FYs 2000–2006 when there were no monkfish possession limits in the NFMA. However, during that time, NFMA monkfish target TACs and landings were substantially higher than the FY 2013 NFMA monkfish TAL (5,854 mt), with landings ranging from 14,853 mt in FY 2001 to 6,677 mt in FY 2006. Therefore, although the target TACs were not exceeded during FYs 2000–2006, the target TACs were substantially higher than the FY 2013 TAL, and NFMA monkfish landings were always in excess of the FY 2013 TAL during this period. This highlights that the capacity to fully harvest the FY 2013 NFMA monkfish TAL existed in the fishery during recent years when there were no possession limits in the NFMA for vessels fishing under a monkfish or groundfish DAS. This also emphasizes the need for us to carefully monitor NFMA monkfish landings during FY 2013 to ensure that the FY 2013 NFMA monkfish TAL is not exceeded, and to reinstate monkfish possession limits if available data indicate that the TAL could be exceeded before the end of the FY, as necessary.

Comment 10: One vessel owner stated that the NFMA fishery is mostly an incidental catch fishery, with another vessel owner noting that the current monkfish possession limits are insufficient to justify directed fishing for monkfish in the NFMA. This latter commenter suggested that the proposed action would allow him the fishing opportunities he needs to justify building the nets necessary to target monkfish. A commercial fishing group agreed, asserting that this emergency action would not address the underlying issue that current monkfish effort controls are preventing the fishery from achieving optimum yield (OY). That group suggested that measures necessary to ensure the fishery can regularly achieve OY must be comprehensively addressed in Amendment 6 to the Monkfish FMP.

Response: For various reasons, a majority of monkfish landed from the NFMA are landed as a result of incidental catch in the groundfish fishery, not as a result of directed fishing for monkfish. We agree that eliminating the monkfish possession limits as part of this interim final rule may entice individual vessel operators to more actively target monkfish, as intended, which will help them to come close to OY for this fishery. The NEFMC and MAFMC are actively considering replacing existing effort controls with alternative quota-based measures in the NFMA as part of Amendment 6 to the FMP.

Comment 11: The MA DMF asked what trigger will be used to reinstate trip limits in the NFMA, and which trip limits will be reinstated. They were unsure whether existing possession limits would be reinstated, or if NMFS would implement something different.

Response: If available data suggest the NFMA monkfish TAL will be exceeded before the end of FY 2013, we will reinstate existing NFMA monkfish possession limits (1,250 lb (567 kg) tail weight and 600 lb (272 kg) tail weight per DAS) for the remainder of FY 2013. We will project monkfish landings throughout FY 2013 to ensure that the reinstatement will prevent the FY 2013 TAL from being exceeded.

Comment 12: Several commenters were concerned that the proposed action would only apply to monkfish Category C and D permit holders, rather than all limited access monkfish permits, with one commercial fishing group suggesting that the proposed action was inconsistent with National Standard 4 of the Magnuson-Stevens Act. Two vessel owners suggested that NMFS should eliminate monkfish possession limits for all permit holders, with one owner stating that it is inappropriate to relax landing limits for those that operate on a groundfish DAS, and that the proposed action disenfranchises monkfish Category A and B vessels. One vessel owner was concerned that the proposed action would increase landings and depress prices for those vessels that are not exempt from the existing monkfish

possession limits and cannot benefit from the emergency action.

Response: As noted in the proposed rule for this action, we believe that an emergency exists in the groundfish fishery, and that emergency action is necessary to help mitigate adverse economic and social impacts resulting from substantial reductions in groundfish ACLs in FY 2013. No such emergency exists for vessels issued a monkfish Category A or B permit. They are not directly affected by reductions in groundfish ACLs in FY 2013. In contrast, vessels issued a monkfish Category C or D permit are directly affected by such reductions, and can benefit from additional opportunity to harvest monkfish. Therefore, it is not consistent with the intent of this action to increase possession limits for monkfish Category A or B vessels who are unaffected by the reductions in FY 2013 groundfish ACLs.

Emergency actions must adhere to the Magnuson-Stevens Act and its National Standards. The National Standard 4 guidelines at § 600.325 state that allocations of fishing privileges must be fair and equitable, and reasonably calculated to promote conservation. Regarding fairness and equity, the guidelines state that such an allocation should be ''rationally connected to the achievement of OY or with the furtherance of a legitimate FMP objective.'' The guidelines allow that an allocation may impose a hardship on one group if it is outweighed by the total benefits to another group. This emergency action attempts to achieve OY in the NFMA by increasing the likelihood that the FY 2013 NFMA monkfish TAL will be fully harvested. This action will provide additional fishing opportunities and associated landings and fishing revenue for Category C and D monkfish vessels impacted by reductions in groundfish ACLs. In doing so, this action addresses Objective 2 of the FMP in that it attempts to optimize yield and maximize economic benefits to a particular fishing sector. Thus, there is a direct and rational connection between this action and an objective of the FMP. Category A and B vessels will continue to be able to participate in both the directed and incidental monkfish fishery in the NFMA during FY 2013, but will not be able to land monkfish in excess of existing possession limits, as currently prescribed. While such vessels would not benefit from the opportunity to land monkfish in excess of existing possession limits, no predictable hardship is being imposed, as this is consistent with measures in effect since FY 2011. One commenter contended that Category A and B vessels could face reduced prices for monkfish they are able to land if large amounts of monkfish are landed in a short period of time and demand is insufficient to accommodate the supply at that time. However, this could occur in any FY. Further, as discussed more thoroughly in the EA prepared for this action, ex-vessel prices vary for a number of reasons, including the amount landed, the size of fish landed, and product type landed (whole, headed, tails, etc.). Therefore, it is very difficult to estimate the scale of any potential hardship that may befall Category A and B vessels due to additional monkfish landings as a result of this action. Overall, however, it is expected that there will be benefits to Category C and D vessels, and no predictable adverse impacts to Category A and B vessels during the duration of the emergency measures. Thus, the measures implemented by this interim final rule are consistent with National Standard 4.

Comment 13: One commercial fishing group was concerned that emergency measures were not discussed at the Monkfish Oversight Committee/Advisory Panel meeting in December 2012, and that the monkfish industry members attending that meeting were not aware that the NEFMC had requested emergency action in the NFMA. This group recommended that the proposed emergency action should be considered by the Monkfish Oversight Committee and analyzed by both the NEFMC and MAFMC before any recommendation for emergency action.

Response: Although the Monkfish FMP is jointly managed by both the NEFMC and MAFMC, neither Council is obligated to consult with the other regarding requests for emergency action. We briefed the MAFMC on the NEFMC request for emergency action during the Regional Administrator report at the MAFMC's December 2012 and February 2013 meetings. In addition, we provided an opportunity for the public to comment on the proposed emergency action. In this interim final rule, we have attempted to address concerns raised by the MAFMC and vessel owners operating out of Mid-Atlantic states during the public comment period by revising measures implemented by this interim final rule to reduce the potential for effort to be redirected into the SFMA. Therefore, the fishing industry and the public have had ample opportunity to comment on the proposed rule. In fact, concerns raised by the public have been addressed by modifying some measures in this interim final rule.

Comment 14: One commercial fishing group suggested that the proposed action allows Category C and D monkfish vessels to leave a sector, lease unlimited monkfish DAS, and operate as a common pool vessel without any constraints.

Response: We disagree. While a vessel can elect to withdraw from a groundfish sector until April 30 of each year, that vessel would then become a common pool vessel for the following FY, and would be subject to the existing groundfish common pool measures, including lower groundfish DAS allocations than sector vessels, restrictive possession limits, gear requirements, and trimester TACs and associated area/gear closures. Thus, such vessels are subject to constraints that are designed to prevent the groundfish ACLs from being exceeded. Nothing in the proposed action or this interim final rule allows for the leasing of monkfish DAS.

Comment 15: One commercial fishing group asked how NMFS could justify the proposed emergency action when its own analysis suggests that the current possession limits would result in nearly the entire FY 2013 monkfish NFMA TAL, or at least 88 percent of the TAL, being caught during FY 2013.

Response: The commenter is correct that monkfish landings could be expected to reach 88 percent of the FY 2013 NFMA monkfish TAL under current possession limits based on projections of recent fishing activity in the EA supporting this action. However, that leaves 702 mt (1.5 million lb) of NFMA monkfish TAL uncaught during FY 2013. That is not achieving OY in the fishery. Projections of both the proposed action and the measures implemented by this interim final rule suggest that an additional 176–234 mt (388,000–515,000 lb) of monkfish could be landed during FY 2013. This would help to better achieve OY in the fishery and help mitigate the expected economic and social impacts of reduced groundfish ACLs during FY 2013, as intended, consistent with the Monkfish FMP and the Magnuson-Stevens Act.

Comment 16: One commercial fishing group recommended that NMFS should keep existing monkfish possession limits the same, but increase the number of monkfish DAS allocated to vessels from 40 to 60, and implement a monkfish running clock provision to allow vessels to land monkfish beyond existing possession limits and increase their monkfish DAS charge accordingly. This group also recommended that NMFS allow monkfish Category E vessels to land monkfish up to 50 percent of the total weight of fish on

board. One vessel owner suggested that no additional monkfish DAS should be made available as part of this action. Finally, another commercial fishing group recommended that NMFS establish a modified trip limit based on an analysis of past fishery performance that is designed to reach, but not exceed, the FY 2013 NFMA monkfish TAL.

Response: During the development of Amendment 5 to the Monkfish FMP, the Councils considered an option that would have retained NFMA monkfish possession limits at existing levels at the time (1,250 lb (567 kg) per DAS for Category A and C vessels and 470 lb (213 kg) per DAS for Category B and D vessels), but would increase allocated DAS to 58 monkfish DAS. That resulted in projected landings of 9,574 mt, representing an overage of the FY 2013 NFMA monkfish TAL of 3,720 mt (63 percent). This option, therefore, is likely to result in excessive monkfish landings during FY 2013. Further, by increasing monkfish DAS, it is likely that the group's suggestion would increase bycatch of groundfish stocks, potentially increasing the likelihood that groundfish ACLs would be exceeded during FY 2013. Accordingly, it was not considered further. No additional analysis of the group's suggestion to also increase the amount of monkfish that could be landed by Category E vessels was conducted, because such a measure would only increase monkfish landings beyond that projected if vessels were allocated 58 monkfish DAS in the NFMA. The Councils could consider such suggestions in the next management action, which is expected to set monkfish ACLs and TALs for FYs 2014–2016. Therefore, this interim final rule does not allocate additional monkfish DAS, as recommended by one commenter. Consistent with the recommendation of another commercial fishing group, this interim final rule does establish a modified trip limit (i.e., unlimited for Category C and D vessels) that is based on an analysis of past fishery performance that is designed to reach, but not exceed, the FY 2013 NFMA monkfish TAL.

Comment 17: Given the uncertainty in vessel behavior during FY 2013, several commenters, including the ME DMR, one industry group, and two vessel owners, were concerned about monitoring vessel behavior and monkfish landings. One commercial fishing group, one dealer, and one vessel owner recommended that NMFS can monitor monkfish landings in real time through sector catch reports. One commercial fishing group suggested that NMFS should post a weekly landings update so that everyone can know if the fishery is approaching a trigger that would reinstate existing trip limits. One vessel operator suggested that NMFS should reinstate trip limits when 70 percent of the NFMA monkfish TAL is caught. Another vessel owner stated that it is important to review landings after 180 days to see how close landings are to the TAL before renewing the emergency action for another 186 days, stating that he did not want to see TAL exceeded, triggering reactive accountability measure (AM) in 2015. One commercial fishing group asked how any TAL overage would be applied, and if any overage would be deducted from the TAL/ACT for both areas, or just one area.

Response: We agree that sufficient monitoring of fishing operations is essential during FY 2013 to detect whether fishing patterns and landing rates have changed as early as possible. If fishing operations change in a manner that would suggest the FY 2013 NFMA monkfish TAL may be exceeded before the end of the FY, reinstatement of existing monkfish possession limits may be warranted. We believe that measures in place, including weekly VTRs, sector reports, and VMS positional data and vessel activity declarations, are sufficient to monitor monkfish landings in a timely manner in order to trigger reinstatement of existing trip limits. We will use all data available to monitor monkfish landings and fishing behavior, and have set up a monitoring plan to respond accordingly. Based on the regulations implemented under Amendment 5, any overage of the monkfish ACL, not TAL, in a particular management area would be deducted on a pound-for-pound basis from the ACT of the area in which the ACL was exceeded 2 years following the overage. This would enable the Councils to develop appropriate measures (DAS allocations and trip limits) to ensure that reduced ACT is not exceeded.

Request for Additional Comments

This final rule implements measures that differ from those originally proposed for this emergency action. We have determined that the modifications fall within the scope of possible measures contemplated by this emergency action in that the modification merely withdraws the suspension of an existing measure. This possible action was analyzed as Alternative 1 in the EA developed for this action. Nevertheless, NMFS is soliciting additional public comment on these final measures, including the modification. NMFS is especially interested in receiving comments regarding what effect these measures may have on fishing behavior. Additional comments will be accepted through May 30, 2013.

Changes From the Proposed Rule

NMFS has made two changes to the proposed rule, including changes as a result of public comment. These changes are listed below in the order that they appear in the regulations.

In § 648.94, the proposed suspension of paragraph (b)(3)(i) has been withdrawn, and the proposed addition of paragraph (b)(3)(iv) has been removed because monkfish Category C and D vessels are not exempt from existing monkfish possession limits when fishing under a groundfish DAS in the NFMA as part of this action.

Classification

The NMFS Assistant Administrator has determined that the emergency measures implemented by this interim final rule are consistent with the Monkfish FMP, provisions of the Magnuson-Stevens Act, agency guidelines on emergency rules, and other applicable law. NMFS, in making a final determination, has taken into account the data, views, and comments received during the public comment period.

Because this rule relieves a restriction by suspending the current monkfish possession restrictions for vessels fishing under a monkfish DAS in the NFMA, it is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1). Vessels issued a Federal limited access monkfish Category C or D permit fishing in the NFMA under a monkfish DAS would otherwise be subject to a monkfish possession limit of 1,250 lb (567 kg) or 600 lb (272 kg) tail weight per DAS fished, respectively (see Table 1). If monkfish catch exceeds these limits, a vessel must either discard monkfish, or retain legal-sized fish and remain at sea until sufficient time has elapsed to account for the amount of monkfish retained. This action suspends those possession limits to encourage greater monkfish landings and associated fishing revenue as a means to help alleviate the substantial economic and social impacts expected from substantially reduced groundfish ACLs in FY 2013. Accordingly, implementing this action following a 30-day delayed effectiveness would be contrary to the public interest, because it would unnecessarily delay the public's ability to take advantage of unlimited monkfish possession limits and associated economic benefits of higher monkfish

landings, thereby undermining the intent of the rule. A swift implementation of this final action minimizes the chances of negative economic impacts resulting from the reduced groundfish ACLs for some stocks during FY 2013. Thus, there is also good cause under 5 U.S.C. 553(d)(3) to waive the delay in effectiveness for this action.

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

This interim final rule does not contain policies with Federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

Final Regulatory Flexibility Analysis (FRFA)

An EA was prepared for this action that analyzed the environmental impacts of the measures being implemented, as well as alternatives to such measures. The measures originally proposed for this action are described as Alternative 2 in the EA prepared for this action, while the measures implemented by this action are described as Alternative 1 in the EA. This EA was revised since the publication of the proposed rule to incorporate updated information regarding the population estimates for Atlantic sturgeon, and to reclassify the preferred alternative for this action as Alternative 1. A copy of the Finding of No Significant Impact for the EA prepared for this action is available from the Regional Administrator (see **ADDRESSES**).

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared this FRFA in support of the measures implemented by this interim final rule. The FRFA incorporates the IRFA that was published in the proposed rule for this action, relevant portions of the EA and preamble to this rule, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments. A summary of the economic impacts of the measures implemented by this interim final rule is included below to reflect that the measures implemented by this final action are those classified as the impacts of Alternative 1 in the IRFA that were not fully described in the proposed rule for this action. A description of the action, why it is being considered, its objectives, and its legal basis are contained in the preamble to the proposed and this interim final rule and in the background, purpose, and need discussion (Section 2.0) of the EA prepared for this action, and are not repeated here. A copy of this analysis is available from the Regional Administrator (see **ADDRESSES**).

Summary of the Issues Raised by Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

Comment: As noted in Comment 12, several commenters were concerned that the proposed action would only apply to monkfish Category C and D permit holders, rather than to all limited access monkfish permits, while one vessel owner suggested that the proposed action could depress prices for those vessels not able to land additional monkfish under this action.

Response: Exempting all monkfish limited access permits from the existing monkfish possession limits is not consistent with the purpose and need for this action, as monkfish Category A and B vessels are not directly affected by reductions in groundfish ACLs in FY 2013. In contrast, vessels issued a monkfish Category C or D permit are directly affected by groundfish ACL reductions during FY 2013, and can benefit from additional opportunity to harvest monkfish to help mitigate expected substantial economic and social impacts from reduced groundfish ACLs. Therefore, it is not consistent with the intent of this action to increase possession limits for monkfish Category A or B.

We agree that it is possible that measures implemented by this interim final rule could decrease ex-vessel prices if sufficient volumes are landed in a short period of time and market demand is insufficient to accommodate the supply of monkfish. However, this is possible under current regulations as well. This interim final rule revises the proposed measures by only allowing Category C or D monkfish vessels fishing under a monkfish DAS to be exempt from existing monkfish possession limits in the NFMA. While this is expected to result in increased monkfish landings compared to existing measures, it is expected that less monkfish would be landed than under the proposed action. Therefore, this may help assuage concerns that this action would depress monkfish prices, but would not eliminate the potential for market prices to decrease during FY 2013.

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

Similar to the measures included in the proposed rule, the measures implemented by this interim final rule affect any vessel issued a valid Federal limited access monkfish Category C or D permit that fishes under a monkfish DAS in the NFMA. As of December 7, 2012, 2,212 vessels were issued a Federal monkfish permit, of which 558 were issued limited access monkfish Category C or D permits during FY 2012. However, not all of these vessels will likely fish in the NFMA during FY 2013. During FY 2008, 400 Category C or D vessels fished in the NFMA out of a total of 690 vessels that were issued a limited access monkfish Category C or D permit (58 percent). During FY 2011, a total of 189 monkfish Category C or D vessels fished exclusively in the NFMA, or in both the NFMA and SFMA during the same trip, out of 586 permits issued (32 percent). Therefore, it is expected that between 200–400 vessels would be affected by this action. The average size and horsepower of vessels affected by this action is 60 ft (18 m) and 540 horsepower. Because over 80 percent of NFMA monkfish landings in recent years were landed by trawl vessels, trawl vessels would be most affected by this action. For a more detailed description of the affected entities, refer to the EA prepared for this action (see **ADDRESSES**).

The Small Business Administration (SBA) defines a small business as one that is: Independently owned and operated; not dominant in its field of operation; and has annual receipts not in excess of $4.0 million in the case of commercial harvesting entities. In the proposed rule for this action, the IRFA stated that all vessels affected by this action are considered small vessels. Additional analysis prepared in support of FW 48 to the NE Multispecies FMP (March 25, 2013; 78 FR 18188) provided additional information regarding the size and affiliation of vessels issued a NE multispecies permit, including vessels issued a limited access monkfish Category C and D permit that are affected by this action. Calendar year 2011 serves as the baseline year for this analysis because calendar year 2012 data are not yet available in a fully audited form. There were 396 permited vessels that landed monkfish during calendar year 2011. By grouping unique combinations of persons who own each permit into distinct ownership groups, there were 303 distinct ownership entities identified during 2011. Mean gross sales by each of these distinct ownership groups were then summed for all affiliated permits to determine if the collective permits owned by each distinct ownership group exceeded the SBA threshold for defining large

entities. This results in 277 small entities, and 26 large entities during 2011, using SBA guidelines. Because this interim final rule does not impose any costs on affected entities, there are no disproportionate impacts between small and large entities associated with this action.

Economic Impacts of the Final Action

Realized revenues from the final action are estimated to be approximately $14.4 million from monkfish landings alone by all vessels during FY 2013 based on a projection of monkfish landings and using the average monkfish price observed to date during FY 2012 ($1.22 per lb ($2.69 per kg) live weight equivalent). That projection estimated that monkfish landings would reach 11,764,639 lb (5,336 mt) under the final action (Alternative 1 in the EA). Compared to the No Action Alternative, the final action would increase monkfish landings by nearly 402,000 lb (182,000 kg), but would result in nearly 140,000 lb (63,500 kg) less monkfish landings than the proposed measures (Alternative 2 in the EA). The final action would increase monkfish fishing revenue by $490,000 compared to the No Action Alternative, but would result in nearly $170,000 less monkfish fishing revenue compared to the original proposed measures. Additional fishing revenue would also be expected based on landings of other species.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of This Interim Final Rule

This action does not contain any new recordkeeping or reporting requirements, and does not impose any additional costs to affected vessels.

Description of Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

During the development of this emergency action, NMFS considered and fully analyzed three principal alternatives, including the No Action Alternative, the measures implemented by this interim final rule (Alternative 1), and measures specified in the proposed rule for this action (Alternative 2). The No Action Alternative would have retained the existing monkfish possession limits, while Alternative 2 would have suspended monkfish possession limits for vessels issued a Federal limited access monkfish Category C or D permit when fishing under either a monkfish or a groundfish DAS in the NFMA. NMFS also considered, but did not fully analyze, several additional alternatives that were rejected because they were beyond the scope of the purpose and need for this action. The No Action Alternative was not selected because the existing possession limits would not increase monkfish landings and help mitigate the adverse social and economic impacts of the reduced 2013 groundfish ACLs consistent with the purpose and need for this action. For a more complete description of the alternatives considered, refer to the EA prepared for this action (see **ADDRESSES**).

Both Alternatives 1 and 2 would likely result in increased fishing revenue compared to the existing monkfish possession limits, but different potential impacts on the monkfish resource. Based on public comments and further consideration by NMFS, Alternative 2 would likely create incentives to substantially increase monkfish effort by allowing vessels to use available groundfish DAS to fish for groundfish and monkfish in the NFMA, and save their monkfish DAS to fish for monkfish in the SFMA during FY 2013. Because current monkfish effort controls are based on recently observed fishing practices, such a shift in behavior would likely increase monkfish landings beyond those anticipated, particularly in the SFMA, thereby undermining the effectiveness of effort controls adopted in Amendment 5. This could lead to monkfish landings that exceed the SFMA TAL during FY 2013, as existing regulations do not allow the Regional Administrator to revise monkfish possession limits for vessels operating in the SFMA. Further, such measures are beyond the purpose and intent of this emergency action, and were not included in the proposed rule for this action. Therefore, it would not have been possible to slow or curtail excessive monkfish landings in the SFMA if monkfish fishing effort would shift into the SFMA under the proposed emergency action, as suggested in public comments. To minimize the potential increase and shift of effort into the SFMA, the measures implemented by this interim final rule require vessels to use their monkfish DAS to be exempt from current monkfish possession limits in the NFMA. This reduces the likelihood that monkfish fishing effort would substantially increase outside of the NFMA during FY 2013 and potentially cause the FY 2013 SFMA monkfish TAL to be exceeded.

Although this interim final rule would likely result in less monkfish fishing revenue than would be expected from the original proposed measures (Alternative 2), this final action would likely still result in economic benefits to affected entities. Further, unlike the original proposed measures, the final action would likely increase monkfish fishing opportunities and associated revenue in the NFMA without increasing the likelihood of exceeding the monkfish TAL in the SFMA. If excessive effort in the SFMA results in landings that exceed the SFMA monkfish TAL, overfishing could occur, leading to more restrictive measures and negative impacts in the future. This would necessitate reductions in future monkfish fishing opportunities in the SFMA, as suggested in public comments received for this action. Thus, this final action (Alternative 1) would likely provide the highest overall benefit to affected entities, while reducing the risk of long-term negative impacts to the monkfish resource and associated fishing vessels and communities.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the groundfish and monkfish fisheries. The guide and this final rule will be available upon request from the Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 16, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.94, suspend paragraphs (b)(1)(i) and (b)(1)(ii), and add paragraphs (b)(1)(iii) through (v), and paragraph (h) to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(1) * * *

(iii) *Category A vessels.* A limited access monkfish Category A vessel that fishes 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 only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iv) *Category B vessels.* A limited access monkfish Category B vessel that fishes under a monkfish DAS exclusively in the NFMA may land up to 600 lb (272 kg) tail weight or 1,746 lb (792 kg) whole weight of monkfish (gutted) 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 only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(v) *Category C and D vessels.* Unless otherwise specified pursuant to paragraph (h) of this section, there is no monkfish trip limit for limited access monkfish Category C or D vessels that are fishing under a monkfish DAS exclusively in the NFMA.

* * * * *

(h) *Regional Administrator authority to reinstate monkfish possession limits.* Based upon available information, if the Regional Administrator projects that monkfish landings on trips that fished in the NFMA may exceed the fishing year 2013 target total allowable landing limit of 5,854 mt or, when combined with an estimate of discards, the 6,567 mt annual catch target, before the end of fishing year 2013 on April 30, 2014, the Regional Administrator shall reinstate monkfish possession limits for Category C and D vessels in a manner consistent with the Administrative Procedure Act. If monkfish possession limits are reinstated pursuant to this paragraph (h), Category C vessels shall be subject to the possession limits specified in paragraphs (b)(1)(iii) and (c)(1)(i) of this section, while Category D vessels shall be subject to the possession limits specified in paragraphs (b)(1)(iv) and (c)(1)(i) of this section.

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