

(6) *Vessels fishing with handgear.* A vessel issued a valid monkfish incidental catch permit and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip, regardless of the weight of other fish on board.

(7) *Scallop dredge vessels fishing under a scallop DAS.* A scallop dredge vessel issued a monkfish incidental catch permit and fishing under a scallop DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(d) *Monkfish liver landing restrictions.*

(1) A vessel authorized to land monkfish under this part may possess or land monkfish livers up to 25 percent of the tail-weight of monkfish, or up to 10 percent of the whole weight of monkfish, per trip, except as provided under paragraph (d)(2) of this section.

(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:

$(0.10) \times [(tail\ weight \times 3.32) + (whole\ fish \times 1)]$

NOTE TO PARAGRAPH (d)(2): The value 3.32 is the live weight conversion for tails and the value of 1 is the live weight conversion for fish landed in a whole condition.

(e) *Transiting.* A vessel that has declared into the NFMA for the purpose of fishing for monkfish, or a vessel that is subject to less restrictive measures in the NFMA, may transit the SFMA, provided that the vessel does not harvest or possess monkfish from the SFMA and that the vessel's fishing gear is properly stowed and not available for immediate use in accordance with § 648.23(b).

(f) *Area declaration.* Should the trip limits specified in paragraphs (b)(2)(iii), (iv), (v), and (vi) of this section be implemented under paragraph (b)(2) of this section, a vessel, in order to fish for monkfish under a monkfish DAS in the NFMA, must declare into that area for a period of not less than

30 days. A vessel that has not declared into the NFMA under this paragraph will be presumed to have fished in the SFMA under the more restrictive requirements of that area. Such restrictions will apply to the entire trip. A vessel that has declared its intent to fish in the NFMA may transit the SFMA, provided that it complies with the transiting provisions described in paragraph (e) of this section.

(g) *Other landing restrictions.* Vessels are subject to any other applicable landing restrictions of this part.

[64 FR 54749, Oct. 7, 1999, as amended at 65 FR 11480, Mar. 3, 2000; 65 FR 37917, June 19, 2000]

EFFECTIVE DATE NOTE: At 67 FR 35931, May 22, 2002, § 648.94 was amended by suspending paragraphs (b)(1) through (b)(7) and (c)(2), and by adding paragraphs (b)(8) through (b)(11) and (c)(7), effective May 17, 2002, through Nov. 18, 2002.

§ 648.95 [Reserved]

§ 648.96 Monkfish framework specifications.

(a) *Annual review.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, or other measures necessary to achieve the Monkfish FMP's goals and objectives.

(1) The MFMC shall review available data pertaining to discards and landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

(2) Based on this review, the MFMC shall recommend target TACs and develop options necessary to achieve the Monkfish FMP's goals and objectives, which may include a preferred option. The MFMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MFMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the

MFMC may include any of the management measures in the Monkfish FMP, including, but not limited to: 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; and other frameworkable measures included in §§ 648.55 and 648.90.

(3) The Councils shall review the recommended target TACs and all of the options developed by the MFMC and other relevant information, consider public comment, and develop a recommendation to meet the Monkfish FMP's objectives, consistent with other applicable law. The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options developed by the MFMC. The oversight committee would review the options developed by the MFMC and any other relevant information, consider public comment, and make a recommendation to the Councils. If the Councils do not submit a recommendation that meets the Monkfish FMP's objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MFMC unless rejected by either Council, provided such option meets the Monkfish FMP's 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.

(4) Based on this review, the Councils shall submit a recommendation to the Regional Administrator of any changes, adjustments, or additions to management measures necessary to achieve the Monkfish FMP's goals and objectives. The Councils' recommendation 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 or amendments for monkfish require majority

approval of each Council for submission to the Secretary.

(5) If the Councils submit, on or before January 7 of each year, a recommendation to the Regional Administrator after one framework meeting, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the FEDERAL REGISTER as a proposed rule. The FEDERAL REGISTER notification of the proposed action shall provide a 30-day public comment period. The Councils may instead submit their recommendation on or before February 1 if they choose to follow the framework process outlined in paragraph (c) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs that the Councils' recommendation meets the Monkfish FMP's objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action shall be published as a final rule in the FEDERAL REGISTER. If the Regional Administrator concurs that the recommendation meets the Monkfish FMP's objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year, fishing may continue. However, 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 year.

(6) If the Regional Administrator concurs in the Councils' recommendation, a final rule will be published in the FEDERAL REGISTER prior to each fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the Monkfish FMP's goals and objectives, the Regional Administrator may publish as a proposed rule one of the MFMC options reviewed and not rejected by either Council, provided that the option meets the Monkfish FMP's objectives and is consistent with other applicable law. If the Councils fail to submit a recommendation that meets the objectives and is consistent with

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other applicable law, the Regional Administrator may adopt any option developed by the MFMC, unless it was rejected by either the New England or Mid-Atlantic Council, provided the option meets the objective and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action shall be published as a final rule in the FEDERAL REGISTER.

(b) *Three-year review of biological objectives and reference points.* The MFMC shall meet on or before November 15, 2001, to evaluate threshold and target biological reference points. If adjustments are required, a framework action shall be initiated to replace the existing (“default”) measures scheduled to take effect on May 1, 2002 (Year 4). The framework process shall include a comprehensive evaluation, conducted by the MFMC during 2001, of the effectiveness of the management measures to reduce mortality below the overfishing threshold and allow rebuilding within (at that time) 6 years. If a change is required, the framework process shall follow the procedure described in paragraph (a) of this section, but may also include an adjustment of the overfishing definition.

(c) *Within season management action.* Either Council, or the joint Monkfish Oversight Committee (subject to the approval of the Councils chairmen), may at any time 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. Framework adjustments shall require at least one initial meeting of the Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two Council meetings, one at each Council. Management adjustments or amendments for monkfish shall require majority approval of each Council for submission to the Secretary.

(1) *Adjustment process.* After a management action has been initiated, the Councils must develop and analyze appropriate management actions over the span of at least two 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. The Councils’ recommendation on adjustments or additions to management measures must come from one or more of the following categories: 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; and other frameworkable measures included in §§ 648.55 and 648.90.

(2) *Adjustment process 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(d) and (e).

(3) *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.

(4) *Action by NMFS.* If the Councils' recommendation to NMFS includes adjustments or additions to management measures and:

(i) If NMFS concurs with 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) of this section, then the measures shall be issued as a final rule in the FEDERAL REGISTER.

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

(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.

[64 FR 54751, Oct. 7, 1999]

Subpart G—Management Measures for the Summer Flounder Fisheries

§ 648.100 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve, with at least a 50-percent probability of success, a fishing mortality rate (F) that produces the maximum yield per

recruit (Fmax): Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommended measures.* Based on this review and requests for research quota as described in paragraph (f) of this section, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to ensure, with at least a 50-percent probability of success, that the F specified in paragraph (a) of this section will not be exceeded:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified F.

(2) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified F, set after reductions for research quota.

(3) Commercial minimum fish size.

(4) Minimum mesh size.

(5) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified F, set after reductions for research quota.

(6) Recreational minimum fish size.

(7) Recreational season.

(8) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons set after reductions for research quota.

(9) Restrictions on gear other than otter trawls.

(10) Adjustments to the exempted area boundary and season specified in § 648.104(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraph (a) of this section, to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.