

## **1.0 Introduction**

### **1.1 Executive Summary**

This is the second framework adjustment to the Monkfish Fishery Management Plan (FMP). The New England and Mid-Atlantic Fishery Management Councils jointly manage the monkfish fishery, with the New England Council (Council) having the lead authority. The FMP implementing regulations specified at 50 CFR 648.96 require annual review of the progress of the plan toward the rebuilding goals, and adjustment of management measures, as needed to achieve those goals. This framework document contains the Councils' proposed action and alternatives, developed by the Monkfish Monitoring Committee (MMC) and Oversight Committee, for setting optimum yield (OY) and management area catch targets (TACs) consistent with the FMP's 10-year rebuilding plan, as well as the associated management measures designed to achieve those catch targets, and revisions to the overfishing and minimum biomass threshold reference points.

The original FMP contained a four-year phase-in of management measures to reduce fishing effort and rebuild the stocks within ten years or less. For Year 4, starting May 1, 2002, the FMP contained default measures that called for elimination of the directed fishery (zero DAS) and reduced bycatch trip limits, unless modified by a comprehensive plan review during Year 3 (FY2001). The Year 3 review resulted in Framework 1 (implemented by NMFS through an emergency action) which delayed the default measures for one year so the Councils could complete a plan amendment (Amendment 2) to address a number of issues with the FMP. The scope of issues being addressed, however, precluded completion and implementation of Amendment 2 prior to the start of the 2003 fishing year, so the Councils initiated this framework adjustment (Framework 2). The proposed action, and alternatives (other than the no action alternative) will eliminate of the default measures because they are no longer supported by the best and most recently available science.

The purpose and need for this action is detailed in Section 2.0. Section 3.0 contains a description of the proposed action and alternatives. Baseline information for evaluating the impacts of the various alternatives, the "affected environment" is described in Section 4.0. Section 5.0, "Environmental Consequences" provides the methods and results of the analysis of impacts of the range of alternatives under consideration. Section 9.0 discusses and summarizes this framework's consistency with the Magnuson-Stevens Act. Other sections pertain to the requirements of other applicable law such as the National Environmental Policy Act (NEPA), the Endangered Species Act, the Marine Mammal Protection Act, Regulatory Flexibility Act, Executive Order 12866 (Regulatory Impact Review), Coastal Zone Management Act, and Paperwork Reduction Act.

Based on fall, 2002 survey indices, both northern and southern stocks are not overfished under current definitions of minimum biomass threshold, although pending implementations of the Councils' proposed revision, the southern stock will be slightly below the new minimum. This will not materially affect the fishery, however, since both stocks are already in the midst of a 10-year rebuilding program. Since current fishing mortality cannot be reliably estimated, the status of the stocks with respect to the

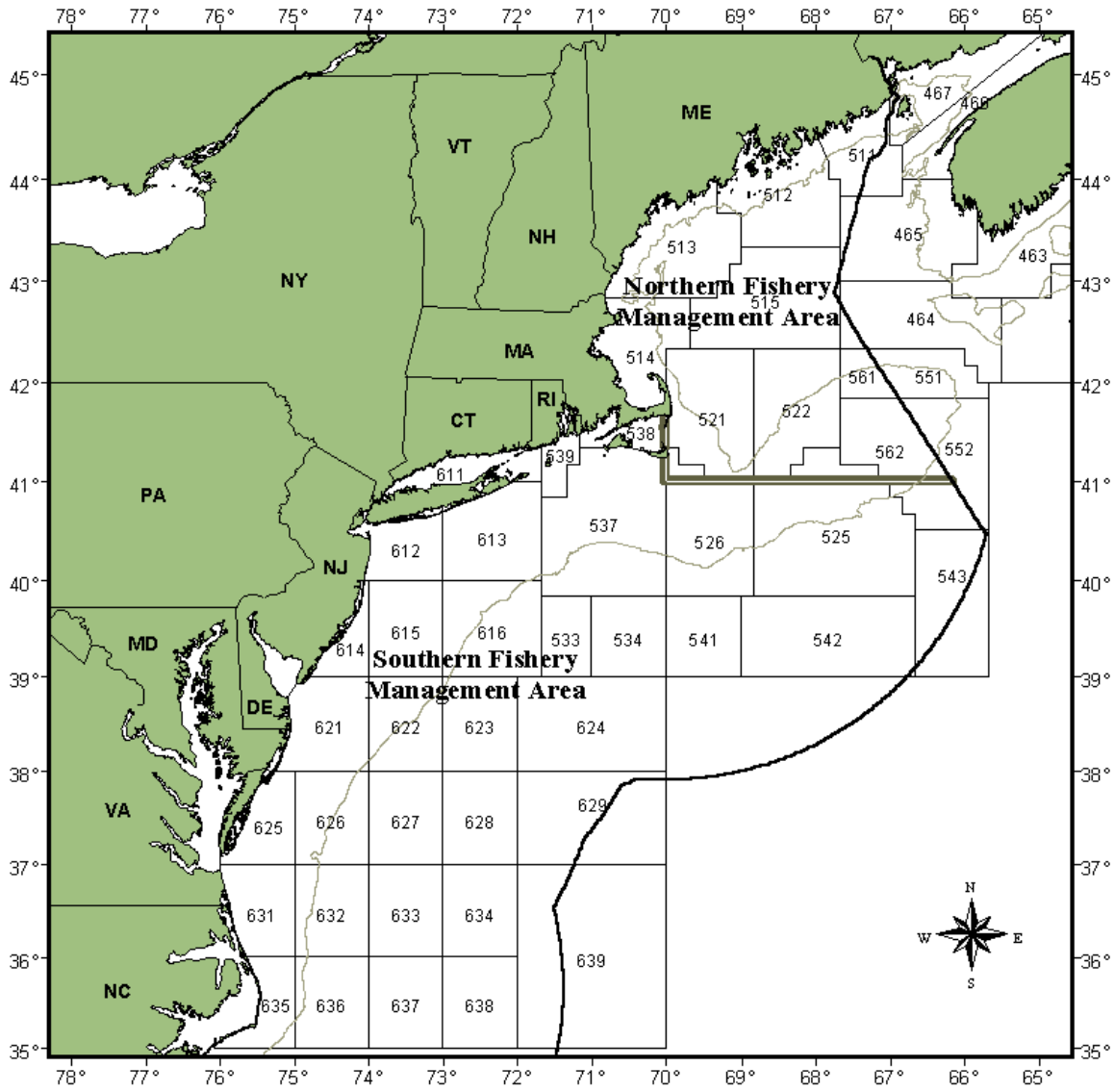
overfishing definition threshold is unknown. The Councils' propose implementing the overfishing reference point adopted by NMFS in the 2002 emergency interim rule of  $F_{max}$ ,  $F=0.2$ .

This framework will establish an index- and landings-based method for setting annual harvest targets (TACs). The method compares current 3-year average biomass index values to annual targets that are based on ten equal increments between the 1999 levels (the start of the rebuilding program) to the 2009 biomass target (proxy for maximum sustainable yield biomass level). The annual TACs will be set based on the ratio of observed annual index values (3-yr. ave.) to the annual targets applied to the previous year's landings. If the observed value is below the target, the TAC will be set proportionally below the previous year's landings, and trip limits will be adjusted accordingly using a formula establish in the framework. Under the Councils' proposed action, if the observed valued is above the target, the TAC would be increased from previous year's landings by 1/2 the ratio up to a maximum of 20 percent. Other options would not allow for an increase when F is unknown (and overfishing status cannot be determined).

The proposed mechanistic method described above could be used to set future TACs and associated management measures by notice action, provided the measures are within the range of those that have been previously analyzed and reviewed by the public. Thus, in the event Amendment 2 is not implemented by May 1, 2004, NMFS could set 2004 trip limits and TACs by publication of a notice in the *Federal Register* as long as those measures are within the scope of the analysis contained in this document.

For FY2003, the TACs under the proposed action would be 10,211 mt in the SFMA and 17,708 mt in the NFMA, compared to FY2002 and FY2001 TACs of 7,921 mt and 6,024 mt (SFMA), and 11,764 mt and 5,673 mt (NFMA). Trip limits in the SFMA would be increased from FY2002 levels, 550 lbs. tail weight/DAS on Category A and C, and 450 lbs./DAS on Category B and D, to 1,250 lbs./DAS and 1,000 lbs./DAS respectively. In the NFMA, there is currently no trip limit on monkfish limited access vessels, and no change is proposed, but open-access Category E vessels would have their incidental catch limits increased to the lesser of 400 lbs./DAS or 50 percent of total weight of fish on board, from current levels of 300 lbs./DAS or 25 percent of total weight of fish on board.

The Councils recommend that the proposed action be published as a proposed rule to afford the public an additional opportunity to comment. This document contains an Environmental Assessment supporting a finding of no significant impact on the environment under the standards and guidelines of the National Environmental Policy Act (NEPA). This document also contains a regulatory impact review and draft initial regulatory flexibility analysis, with a finding that none of the proposed alternatives would meet criteria for a significant regulatory action under Executive Order 12866, and that the proposed regulations would likely have a significant positive impact on a substantial number of vessels that participate in the SFMA on monkfish-only DAS under the evaluation criteria of the Regulatory Flexibility Act. The incidental catch trip limit change in the NFMA would impact a substantial number of participating small entities but the overall impact is not expected to be significant.



**Figure 1 Monkfish management areas**

## **1.2 Background**

### **1.2.1 FMP implementation**

The Council submitted the Monkfish FMP to NMFS on September 17, 1998. NMFS published the proposed rule on February 16, 1999 and the final rule on October 7, with an effectiveness date for implementation of November 8, 1999. The FMP contains the following measures:

- multi-level limited access program
- two management areas (see Figure 1)
- target TACs
- effort limitations (DAS)
- trip limits
- bycatch allowances
- minimum fish size and minimum mesh size
- gear restrictions
- spawning season closures
- a framework adjustment process
- permitting and reporting requirements
- other measures for administration and enforcement.

The FMP contains a four-year phase in of management measures to reduce fishing effort and rebuild the stocks within ten years or less.

Year 1 of the plan began May 1, 1999 the scheduled start of the fishing year, even though the FMP was not implemented until six months into the fishing year. An analysis by NMFS in 2000, however, concluded that even if the Year 1 measures had been implemented on May 1, 1999, the quota for the Southern Area would have been exceeded. Consequently, the Council made no adjustment to the default regulations for Year 2 or Year 3. For Year 4, starting May 1, 2002, the FMP regulations called for elimination of the directed fishery (zero DAS) and reduced bycatch trip limits, unless modified by a comprehensive plan review during Year 3 (FY2001).

### **1.2.2 Federal Court Order**

In 2001, a Rhode Island Federal Magistrate Judge issued recommendations to the Federal District Court Judge on motions for summary judgment in a suit brought by several southern New England and New Jersey gillnetters challenging the differential trip limits in the FMP for vessels fishing under a monkfish DAS. The Federal District Court Judge agreed with most of the conclusions and opinions of the Magistrate Judge and ruled that based on the justification provided in the FMP, the differential trip limit violated National Standards Two, Four and Five. The judge vacated the 300 pound-per-day gillnet trip limit and set a 1,500 pound trip limit “for all monk fishermen...until such time as the Secretary [of Commerce] establishes a fair and equitable gear differential or otherwise revises the catch limit”. The judge later clarified the order that the trip limits apply by permit category. The effect of this order was that the trip limit on non-trawl (i.e. gillnet) vessels

was raised from 300 lbs./DAS to 1,000 or 1,500 lbs./DAS, depending on permit category, for the remainder of FY2001.

### **1.2.3 Year 3 review/Framework 1/emergency action**

The regulations implementing the FMP require the Council to conduct a review of the status of the fishery during Year 3 of the rebuilding plan, FY2001, and make adjustments, as needed, to insure that rebuilding to stock biomass targets by 2009 remains on schedule. The MMC considered the results of the most recent stock assessment workshop (SAW 31, June, 2000) and reviewed landings and stock survey data in recommending that the management measures in place for FY2000 and FY2001 not be changed except to account for the court order.

Based on the Year 3 review and the results of a new stock assessment (SAW 34, January 2002), the Councils determined that additional work was necessary to thoroughly evaluate stock status, biological reference points and the rebuilding program. To that end, the Councils initiated work on Amendment 2 to the FMP and submitted Framework 1, incorporating the MMC recommendation and delaying for one year the default measures. In Framework 1, the Councils concluded that, based on the best available scientific information, fishing mortality rates had been reduced sufficiently to end overfishing under on the fishing mortality threshold reference point recommended by the Stock Assessment Review Committee (SARC 34), and observed that stock biomass was stable (in the SFMA) or increasing (in the NFMA).

NMFS disapproved Framework 1 because it did not comply with the fishing mortality rate threshold specified in the original plan (which had been invalidated by SAW 31 and SAW 34), but implemented a revision to the overfishing definition based on the recommendations of the SARC through an emergency interim rule (*67 Federal Register* 35928, May 22, 2002). NMFS also implemented in the emergency rule the measures recommended by the Council in Framework 1. In so doing, NMFS concurred with the Councils' determination that the measures in Framework 1 would end overfishing in 2002, based on the revised fishing mortality threshold recommended by SARC 34.

NMFS has extended the emergency interim rule through April 30, 2003 (*67 FR* 67568, Nov. 6, 2002). If the Council does not implement alternative measures, the default measures will take effect upon expiration of the emergency interim rule. The measures in Framework 1/emergency rule also include a revision to the trip limit to account for a federal court decision in vacating the gear-based trip limit differential in the original plan.

### **1.2.4 Amendment 2**

As noted, in 2002, the Councils initiated an amendment to the FMP to incorporate the SAW 34 assessment results in a revision of the stock-rebuilding plan and address other issues. The original timetable for the amendment would have resulted in implementation of any appropriate changes to the overfishing definitions and revisions to the management program by the start of Year 5 (May, 2003). However, NMFS informed the Councils that even if they met the November 2001 submission target, the agency could not guarantee that the measures would be implemented by the start of FY2003. Without any other adjustment, the default measures delayed by Framework 1 would take effect at that time. As a result, the Councils agreed to initiate this framework, to put in place

management measures appropriate to the rebuilding plan and updated scientific information on stock status.

## **2.0 Purpose and Need**

The purpose of the proposed action is to continue the ten-year stock rebuilding program started in 1999 under the original monkfish FMP consistent with updated scientific information. The fishery is currently (FY2002) being managed under NMFS' emergency rule (see Section 1.2.3). The FMP contains default measures that, unless eliminated or delayed beyond FY2003, will end the directed fishery (no allocation of monkfish DAS) and reduce some incidental catch limits.

The default measures were developed in the original FMP based on scientific analysis and projections done in 1997. More recent analyses and stock assessments have indicated that the scientific basis for the default measures is not valid, and the measures are no longer appropriate. Furthermore, reduced incidental catch limits in some fisheries may not *de facto* reduce fishing mortality if monkfish in excess of the limit are caught anyway and discarded. Secondly, those more recent scientific analyses have invalidated the fishing mortality reference points in the original FMP and provided alternative reference points that need to be incorporated into the FMPs overfishing definition and control rules. The MMC has developed options for consideration by the Councils to replace existing overfishing definition/control rules with more appropriate and practicable provisions.

## **3.0 Proposed action and alternatives**

This section contains a description of the no action alternative (default measures) and alternatives, including alternative overfishing definition reference points and control rules, as well as a range of adjustments to the management measures (trip limits and DAS allocations) for each overfishing definition alternative. When the final meeting framework document was prepared, 2002 trawl survey indices were not available, so the MMC provided a range of target TACs and associated management measures as a contingency for updated NEFSC trawl survey indices for 2002. Those indices are now available and incorporated into the proposed action discussion, see Section 3.1.5.2.

The following description of the alternatives is the same as that reviewed by the Councils in the final meeting framework document, showing a range of possible survey indices and associated TACs. New sections are added to this document to show the effect of final 2002 survey indices available since November 22 and the contingency analysis for FY2004. In the event Amendment 2 is not implemented by May 1, 2004, NMFS can set TACs by notice action using the method recommended in this framework.

The contingency analysis for 2004 uses the same method as the analysis in the final meeting framework document (for FY2003), covering a range of possible survey indices (this time for fall 2003), but also includes a range of possible FY2002 landings (since the proposed action bases TACs on survey indices and previous year's landings). This contingency analysis facilitates multi-year impact analyses, so that NMFS can adjust 2004 TACs and management measures by notice action, if necessary (that is, if implementation of Amendment 2 is delayed beyond May 1, 2004), in accordance with agency and Council efforts to streamline the management process.