

mechanisms, to minimize the effects of the fishery on those environmental components.

5.8 Short-term use vs. long-term productivity

The proposed action is an adjustment to the monkfish stock-rebuilding program implemented under the FMP. The purpose of the action is to implement measures and management control rules that are based on achieving the biomass targets by 2009. Those targets are adopted as the proxies for the biomass that will support long-term maximum sustainable yield. The program and measures adopted in this framework provide a balance between allowing short-term use by the fishery while achieving the long-term productivity goals mandated by the Sustainable Fisheries Act.

5.9 Irreversible and irretrievable commitments of resources

Irreversible commitments of resources are those that cannot be recovered, except, perhaps over the extreme long term, while irretrievable commitments are those that are lost for a period of time. In the case of fishery management, irreversible commitments would result, for example, from the extinction of a species as a result of fishing or the destruction of physical habitat features that would not recover under natural processes. Examples of irretrievable commitments would be, overexploitation of a target or incidental catch species or destruction of biogenic habitat features that would require an extended period of time, and perhaps additional management action to restore.

Applicable law, not only the Magnuson-Stevens Act, but others such as the Endangered Species Act and Marine Mammal Protection Act, mandate measures to minimize or mitigate the effects of fishing, many of which would be irreversible or irretrievable without such controls. To the extent that the FMP, generally, and this framework adjustment, specifically, are shown to be consistent with all applicable law, the risks of irreversibly or irretrievably committing resources are minimized.

6.0 Environmental Assessment (NEPA)

This section addresses the requirements of the National Environmental Policy Act (NEPA) that Federal agencies consider all reasonably foreseeable environmental effects of their proposed actions and involve and inform the public in the decision making process. The Council submitted an Environmental Impact Statement (EIS) with the Monkfish FMP on September 15, 1998. This EA incorporates by reference the information in the original FMP document, particularly Section 6.0, Affected Environment, Section 7.0, Description of Fishery Impacts, and Section 8.1, Environmental Impact Statement. Updates to information in the FMP document are contained in the SAFE for the 2001 fishing year (Appendix I). The purpose and need for the action is discussed in Section 2.0, and a description of the proposed action and alternatives is provided in Section 3.0 of this document. The affected environment is described in Section 4.0 and the environmental consequences in Section 5.0. The list of preparers is in Section 12.0. The purpose of this EA is to determine whether significant environmental impacts will occur as a result of the proposed changes to the regulations.

6.1 Determination of significance

Based on guidance in Section 6.01(b) of NOAA Administrative Order NAO 216-6, May 20, 1999, and the analysis of impacts in Section 5.0 of this document, the proposed action

is deemed not significant. Based on the public comments the Council received when considering this proposal, the action is also not controversial. The NAO216-6 guidelines provide nine elements to be used in evaluating the significance of a fishery management action under NEPA. These elements are discussed below:

1. *The proposed action may be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action.*

This framework adjustment will continue the FMP rebuilding program in a manner that is more consistent with the best available scientific information about monkfish populations. The proposed action implements a harvest control rule that will allow for monkfish stocks to rebuild to long-term maximum sustainable yield levels and to maintain fishing at that level over the long term. If the stock is rebuilding along a trajectory that will achieve the biomass targets by 2009, the fishery will be able to grow proportionally (via increased TACs and associated trip limits). On the other hand, if the stocks do not meet the incremental annual biomass targets, the fishery will be proportionally constrained.

2. *The proposed action may be reasonably expected to jeopardize the sustainability of any non-target species.*

The proposed action does not increase overall monkfish effort, in terms of DAS allocations, and does not otherwise modify management measures such that incidental catch of non-target species would increase. While fishery-wide information on the magnitude of bycatch of non-target species is extremely limited (see Section 5.1.3), vessels fishing for monkfish are still subject to the rules promulgated under other FMPs that regulate the catch (including incidental catch) of other species, for example the Multispecies Exempted Fishery Program and minimum mesh size rules, and, therefore, the proposed action will not likely jeopardize the sustainability of those other species.

3. *The proposed action may be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs.*

As discussed in Section 5.4, the alternatives and actions proposed in this framework adjustment are not expected to increase any adverse impacts on essential fish habitat (EFH) resulting from fishing activity. The Councils have determined that the proposed action is consistent with affected states' Coastal Zone Management Programs.

4. *The proposed action may be reasonably expected to have a substantial adverse impact on public health or safety.*

The proposed action addresses biological reference points and associated management measures designed to achieve monkfish stock rebuilding. The measures proposed include increased trip limits for FY2003 and adjustments to the trip limits and DAS program in future years consistent with achieving annual rebuilding targets. As such, the action does not have an adverse impact on public health or safety.

5. *The proposed action may be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species.*

In conjunction with the approval of Framework 1 to the Monkfish FMP, NMFS reinitiated a Section 7 consultation in accordance with the Endangered Species Act. The ensuing Biological Opinion concluded that the action could result in adverse effects to ESA-listed cetaceans and sea turtles that were not considered in the June 2001 consultation on the Monkfish FMP. The May 2002 consultation for Framework 1 found the action would not jeopardize any listed species under NMFS jurisdiction. Framework 2 would extend the Framework 1 management program with some modifications, but with the possibility of increased risks to ESA-listed species, particularly sea turtles due to potentially higher trip limits. Since the implementation of Framework 1, however, new conservation measures for turtles have been added to the actions in place to reduce risks to listed species. The Council maintains that these new measures will substantially reduce increased risks to these species, based on the analyses in the May 2002 Opinion. The proposed action also will be further considered through either formal or informal Section 7 consultation by NMFS.

6. *The proposed action may be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species.*

The proposed action, designed to achieve biomass rebuilding goals by 2009, will have a positive, not adverse effect on monkfish stocks. As discussed in Section 5.6, the action, which will result in incremental annual changes to the monkfish trip limits and/or decreases in DAS allocations (if stocks decline significantly) will not likely have a cumulative adverse impact on non-target species.

7. *The proposed action may be reasonably expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g. benthic productivity, predator-prey relationships, etc.)*

The proposed action does not increase overall monkfish fishing effort, measured by allocated DAS, and limits catches to levels consistent with rebuilding the monkfish biomass. Changes to trip limits and/or reductions in DAS allocations (if needed) that would result from adoption of the proposed control rule, will not substantially alter the impact of fishery on the ecosystem. While the impact of rebuilding the monkfish biomass on the ecosystem, in terms of the specie's function as a predator-prey element, is unknown, the biomass targets are within the range of historically observed levels and, consequently, not expected to substantially impact biodiversity or other ecosystem relationships.

8. *If significant social or economic impacts are interrelated with significant natural or physical environmental effects, then the EIS should discuss all of the effects on the human environment.*

As discussed in Section 5.0, there are no significant social or economic impacts, nor are there any significant natural or physical environmental effects expected to result from the measures proposed in this framework adjustment.

9. *A final factor to be considered in any determination of significance is the degree to which the effects on the quality of the human environment are controversial.* Since the proposed action is based on updated scientific information regarding the

biological reference points and will allow for harvesting monkfish at optimum yield levels consistent with the stock-rebuilding program, the proposed action is not controversial. The no-action alternative that would implement default measures (and which was rejected by the Councils) is controversial, however, since the scientific basis for the reference points and associated management measures has been invalidated by two stock assessment workshops. Based on public comment received at meetings of the Monkfish Committee and New England and Mid-Atlantic Fishery Management Councils when the proposed action was considered, the Councils have determined that the proposed action is not controversial.

6.2 Finding of no significant impact (FONSI)

In view of the analysis presented in this document and in the EIS for the Monkfish Fishery Management Plan, the proposed action will not have a significant effect on the human environment, with specific reference to the criteria contained in Section 6.02 of NOAA Administrative Order NAO 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999. Accordingly, the preparation of a Supplemental Environmental Impact Statement for the proposed action is not necessary.

Assistant Administrator for
Fisheries, NOAA

Date

7.0 Endangered Species Act and Marine Mammal Protection Act

7.1 Endangered Species Act (ESA)

Section 7 of the Endangered Species Act requires federal agencies conducting, authorizing or funding activities that affect threatened or endangered species to ensure that those effects do not jeopardize the continued existence of listed species. The NEFMC concludes, at this writing, that measures proposed in Framework Adjustment 2 to the Monkfish FMP and the prosecution of the monkfish fishery may affect, but are not likely to jeopardize any ESA-listed species or alter or modify any critical habitat, based on the discussion of impacts in this and other documents referred to in section 5.5. The NEFMC is seeking a determination by the National Marine Fisheries Service on this matter.

For further information on the potential impacts of the fishery and the proposed management action on listed species, see Section 5.5 of this document.

7.2 Marine Mammal Protection Act (MMPA)

The NEFMC has reviewed the impacts of the Framework Adjustment 2 on marine mammals and has concluded that the management actions proposed are consistent with the provisions of the MMPA, and will not alter existing measures to protect the species likely to inhabit the monkfish management unit.

For further information on the potential impacts of the fishery and the proposed management action on marine mammals, see Section 5.5 of this document.

8.0 Regulatory Impact Review and Initial Regulatory Flexibility Analysis

This section provides the analysis and conclusions to address the requirements of Executive Order 12866 and the Regulatory Flexibility Act (RFA). Since many of the requirements of these mandates duplicate those required under the Magnuson-Stevens Act and NEPA, this section contains references to other appropriate sections of this document. The following sections provide the basis for determining whether the proposed action is significant under E.O. 12866 or will have a significant economic impact on a substantial number of small entities under the RFA.

8.1 Regulatory Impact Review (E.O. 12866)

This section contains the required elements for determination of whether the proposed action is significant under E.O. 12866.

8.1.1 Description of management objectives

The goals and objectives of the management plan as stated in Section 3.4 of the Monkfish FMP are:

1. to end and prevent overfishing; to rebuild and maintain a healthy spawning stock
2. to optimize yield and maximize economic benefits to the various fishing sectors
3. to prevent increased fishing on immature fish
4. to allow the traditional incidental catch of monkfish to occur.

The proposed action is consistent with, and does not modify those goals and objectives.

8.1.2 Description of the fishery

Section 6.4 of the FMP contains a detailed description of the fishery. Section 4.0 of this document (“Affected Environment”), referencing the 2001 SAFE Report (Appendix I), contains an updated description of the fishery using the best and most current data available.

8.1.3 Statement of the problem

The problems being addressed, as described in Section 1.2 of this document (“Background”), include the following:

- the lack of current fishing mortality estimates and inappropriateness of some biological reference points
- the inability to set annual optimum yield harvest targets that are consistent with the stock-rebuilding program, and
- the existence of restrictive default measures that would eliminate the directed fishery.

The purpose and need for this action is described in Section 2.0.

8.1.4 Description of the alternatives

Section 3.0 of this document contains a description of the alternatives considered, including a “no-action” alternative.

8.1.5 Economic analysis

Section 5.2 of this document contains the economic analysis of the proposed action and alternatives.

8.1.6 Determination of significance under E.O. 12866

NMFS Guidelines provide criteria to be used to evaluate whether a proposed action is significant. A “significant regulatory action” means any regulatory action that is likely to result in a rule that may:

1. *Have an annual effect on the economy of \$100 million or more, or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.*

This action will not have an annual effect on the economy of \$100 million, nor adversely effect in a material way the economy, a sector of the economy, productivity, competition, the environment, public health or safety, or State, local, tribal governments or communities. Total gross revenues from the fishery in recent years (1999 to 2001) averaged approximately \$45 million. Under restrictions in place in the SFMA in the current fishing year (2002), landings (and revenues) are expected to decline from that level, but would be nearly restored to the 1999-2001 level under the proposed action. For example, compared to current limits, median vessel gross revenues were estimated to increase by 12% (as compared to 23% for monkfish-only trip net return) at the FY2003 quota level for the SFMA. Note, however, that the trip limit changes in the SFMA will only affect a segment of the monkfish fishery. This segment represents approximately 28% of total monkfish landings so the net effect on net benefit of the monkfish fishery as a whole will be modest (about 6.4%). The economic impact of the change in the incidental catch (Category E) trip limit is also expected to be modest as the current limit for these vessels in the NFMA is not constraining on the majority of trips where monkfish are landed. Thus, neither trip limit change would have an adverse impact nor would there either change reach the \$100 million threshold.

2. *Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.*

The proposed action does not create an inconsistency or otherwise interfere with an action taken or planned by another agency. The activity proposed to be allowed under this action involves commercial fishing for monkfish in the Federal waters of the EEZ. NOAA Fisheries is the sole agency responsible for regulating this activity; therefore, there is no and can be no interference with actions taken by another agency. This proposed action would create no inconsistencies in the management and regulation of commercial fisheries in the northeast.

3. *Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.*

The proposed action is to change the management reference points and associated

regulations governing the monkfish fishery. This action is unrelated to any entitlements, grants, user fees, or loan programs, and therefore cannot be considered to be significant under the third criterion specified in E.O. 12866.

4. *Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.*

The proposed action is taken pursuant to the mandates of the Sustainable Fisheries Act to stop overfishing and achieve optimum yield from the fishery using the best available scientific information. There is precedence for this action, in the fact that the fishery has been managed under the FMP since 1999, and that the agency has been making similar adjustments to other FMPs through the framework process since at least 1994. The proposed action, therefore, would not be considered to be significant under the fourth and final criterion specified in E.O. 12866.

Based on this review and assessment, for the purposes of E.O. 12866, none of the proposed alternatives would meet the Order's criteria for a significant regulatory action.

8.2 Initial Regulatory Flexibility Analysis (RFA)

The following sections contain analyses of the effect of the proposed action on small entities. Even though the Council is recommending that the proposed action be published as a final rule, and, therefore, not required to complete an initial regulatory flexibility analysis (IRFA), it is conducting the analysis so that it, and members of the public, have a better understanding of the action's regulatory impacts. To that end, it will follow the standard IRFA format. Under §603(b) of the RFA, each IRFA is required to address:

1. reasons why the agency is considering the action
2. the objectives and legal basis for the proposed rule
3. the kind and number of small entities to which the proposed rule will apply
4. the projected reporting, recordkeeping and other compliance requirements of the proposed rule, and
5. all Federal rules that may duplicate, overlap or conflict with the proposed rule.

8.2.1 Reasons for considering the action

The purpose and need for this action to implement changes to the fishery management plan for Monkfish is described in Section 2.0 of this document. Essentially, 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 and to eliminate the default measures that would unnecessarily shut down the directed monkfish fishery by eliminating DAS.

8.2.2 Objectives and legal basis for the action

The regulations implementing the Monkfish FMP at 50 CFR 648 authorize the Council to adjust the management measures as needed to achieve the goals and objectives of the management plan. The goals outlined in Section 3.4 of the FMP are:

1. To end and prevent overfishing; rebuilding and maintaining a healthy spawning stock

2. To optimize yield and maximize economic benefits to the various fishing sectors
3. To prevent increased fishing on immature fish, and
4. To allow the traditional incidental catch of monkfish to occur.

The proposed action is consistent with the FMP goals and implementing regulations.

8.2.3 Description and number of small entities to which the rule applies

A complete description of the small entities is contained in Section 2.2 of the 2001 SAFE Report (Appendix I). There are approximately 714 limited access permit holders, of which about 85 percent record some monkfish activity. Of the approximately 1,900 open-access Category E permits, only about 25 percent have recorded landing monkfish. Vessels range in size from less than 30 feet to over 90 feet, with the median being less than 50 feet in overall length. Most of the inactive vessels (not landing monkfish or not landing any species) are in the smaller size classes, while 70 percent of the limited access vessels over 50 feet have recorded monkfish landings.

8.2.4 Reporting, recordkeeping and other compliance requirements

The action does not introduce any new reporting, recordkeeping or other compliance requirements.

8.2.5 Duplication, overlap or conflict with other Federal rules

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

8.2.6 Economic impacts on small entities resulting from the proposed action

The vessel-level economic impact analysis of the proposed action is contained in Section 5.2. In achieving optimum yield from the fishery on an annual basis while rebuilding the resource to levels that will sustain long-term maximum sustainable yield, the proposed action strikes a reasonable balance between biological requirements and uncertainties and the financial requirements of small entities. Relative to performance during calendar years 1998-2000, net return on monkfish-only trips would improve by 23% for the median vessel under the proposed trip limits for FY2003. Median vessel performance would be reduced by 63% at a 5,000 MT quota but would increase by 29% at a 13,000 MT quota. Since vessels have varying degrees of dependence on monkfish, relative changes in gross fishing income tend to be lower than economic impacts on monkfish trips alone. For example, median vessel gross revenues were estimated to increase by 12% (as compared to 23% for monkfish-only trip net return) at the FY2003 quota level. In the NFMA, the proposed change in management measures affecting vessels is the increase in incidental catch limits on open-access Category E permits. While the current limit is non-constraining on the majority of the 255 Category E vessels catching monkfish in the NFMA, the proposed increase could allow those vessels that are constrained to increase their monkfish landings by as much as 33 percent without jeopardizing the stock-rebuilding program.

8.2.7 “Significance” evaluation criteria

NMFS’ guidelines specify two criteria to be used for evaluating whether a proposed action is significant: disproportionality and profitability. Disproportionality relates to the effect on small entities compared to large entities. Since all entities engaged in the fishery

fall under the \$3.5 million total sales criterion, this evaluation standard is not relevant to the fishery. According to the analysis of the impact on vessels in the SFMA (Section 5.2), relative to performance during calendar years 1998-2000, net return on monkfish-only trips would improve by 23% for the median and ranged from no change to an improvement of 78% at the FY2003 quota level. Given these levels of expected change in profitability the proposed trip limits may have a significant positive impact on limited access vessels that choose to fish in the SFMA.

At other quota levels median vessel performance would be reduced by 63% at a 5,000 MT quota but would increase by 29% at a 13,000 MT quota. In either of these two scenarios the change in profitability would be significant; negative and positive for the former and latter respectively.

In the NFMA, the only change in management measures would be the increased incidental catch limit on Category E vessels, of which 255 landed monkfish in FY2001. The impact on these vessels is not expected to be significant, however, because the monkfish average catch (62 lbs.) is well below the current and proposed incidental catch limits. Even though the current trip limit is not constraining for the majority of trips, the proposed increase would still be a positive economic impact for the infrequent number of trips where the current trip limit is constraining. However, in terms of improvements to participating vessels' annual profit, the proposed change is not likely to have a significant impact.

8.2.8 “Substantial number” evaluation criteria

NMFS' guidelines state that “a rule may be determined to affect a substantial number of small entities if the rule is controversial, impacts more than just a few entities, or affects the structure of the regulated industry even though only a small number of entities may be impacted”. The proposed action may affect a substantial number of small entities because it will impact the approximately 700 limited access permit holders, although not in an adverse way, through the adjustments (increase) to the SFMA trip limits. While not all of these vessels will realize an impact, the median vessel will realize a 23 percent positive impact in net returns on monkfish trips under the 2003 SFMA TAC (and associated trip limits). Under future TACs that could range from 5,000 mt to 13,000 mt, the median vessel would realize gross revenue impacts ranging from -49 percent to +17 percent. In the NFMA, approximately 255 vessels out of approximately 1,500 multispecies permit holders landed monkfish under the open-access Category E (incidental catch) permit. These vessels, while perhaps a substantial number, will mostly be unaffected by the proposed incidental catch limit increase since they land on average only about 20 percent of the current limit.

Combining the two evaluation criteria, 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. The incidental catch trip limit change in the NFMA would impact a substantial number of participating small entities but the overall impact on vessel profitability is not expected to be significant.

9.0 Magnuson-Stevens Act (MSFCMA)

9.1 Consistency with the National Standards

Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act requires that FMPs contain conservation and management measures that are consistent with the ten National Standards. The following section summarizes, in the context of the National Standards, the analyses and discussion of the proposed action that appear in various sections of this framework adjustment document.

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

The purpose of the proposed action, to modify the overfishing definition reference points and control rule, as well as the method for setting appropriate management measures, is to achieve optimum yield on an annual basis in a manner consistent with rebuilding monkfish stocks by 2009 to levels that will support harvesting long-term maximum yield. The control rule for setting annual optimum yield catch targets is designed to achieve annual incremental growth targets in the biomass indices for each stock based on the 10-year rebuilding program started in 1999 with implementation of the FMP.

(2) Conservation and management measures shall be based upon the best scientific information available.

The proposed revisions to the overfishing definition reference points and control rules incorporates new scientific information from the past two stock assessments (SAW 31 and SAW 34). These two SAWs also invalidated the original reference points adopted in the FMP based on new information and data, including the results of the 2001 cooperative monkfish survey conducted with the fishing industry. This framework action establishes a method for setting annual catch targets based on the most recent NMFS fall trawl survey each year and previous year's commercial landings.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The FMP established a two-area management program for monkfish, covering the exploitable range of the species. SARC 34 discussed the basis for assessing goosefish as a single stock, versus two stocks, and concluded that information was insufficient to make a determination on a biological basis. The SARC noted that the choice of number of management units is independent of the number of assessment units, and that the use of two management units may be required because of the characteristically different fisheries that occur in the two areas, in terms of gear, catch composition, seasonality and other parameters.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed action does not discriminate between residents of different states, nor does it allocate fishing privileges among various sectors of the fishery. While regulations may have a differential impact on different sectors of the industry, that differential impact is not the purpose, and is done in a manner that is intended achieve the conservation goals of the FMP. The two-area management program is based on differences in the fisheries between the two areas, and not to allocate fishing privileges differently among sectors of the industry. The Councils note that subsequent to the findings in the 2001 Rhode Island District Court case, trawl and gillnet vessels are given the same trip limits.

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

The proposed action and alternatives are designed to achieve the FMP's biomass rebuilding goals while minimizing the economic impact to the industry and associated communities, and minimizing bycatch potential by setting trip limits at the highest possible level consistent with achieving annual rebuilding targets. While the FMP, and the proposed action, may have differential impacts among different fishery groups, that is not the purpose of the plan.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

As noted in discussion of National Standards 3 and 4, the two-area approach, is intended to take into account the differences in fisheries between the two areas. Other measures in the FMP, such as the permit categories and incidental catch limits are also based on the vast differences among different fisheries that catch monkfish as a target or incidental catch species. The proposed action does not change the Councils' consideration of variation among the different fisheries, and the proposed increase in NFMA incidental catch limits is consistent with that view. Vessels that do not have a monkfish limited access permit and fishing on a multispecies DAS in the NFMA will be faced with increasing monkfish catch rates, as the stock approaches a rebuilt state, and at the same time, see multispecies catch limits reduced under the increasingly restrictive groundfish rebuilding program. Unless their monkfish catch limits (absolute and percentage-based) are adjusted, these vessels will be forced to discard increasing amounts of monkfish.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The regulations promulgated under the Monkfish FMP, and modified in the framework adjustment are necessary to rebuild the monkfish resource. By establishing a program that will set optimum yield catch targets in a manner that will maximize fishing opportunity consistent with reaching annual rebuilding targets, the proposed action will minimize costs associated with the rebuilding program requirements.

(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such

communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

The measures proposed in this framework adjustment are not likely to result in significant adverse impacts on affected fishing communities and, in fact, will have a positive impact when compared to the no-action alternative (default measures closing the directed fishery). The proposed action is intended to allow for continued access to monkfish for vessels and communities that depend, to varying degrees, on a directed fishery by eliminating the default measures, and setting annual catch targets consistent with achieving stock rebuilding by 2009.

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

The proposed action establishes a method for setting monkfish trip limits at levels that will enable the fishery to maximize landings consistent with growth trends in the stocks, based on changes to the NMFS bottom trawl survey indices. As stocks grow, catch rates increase proportionally, and allowing vessels to land increasing amounts of monkfish on a per-day basis, as the proposed action does, directly reduces the amount of regulatory discarding that would otherwise occur. Furthermore, in the NFMA, where stock rebuilding is well ahead of schedule, vessels that do not have a limited access permit (and are limited to 400 lbs. tail weight or 25 percent of total weight of fish on board) would have their incidental catch limits increased under the proposed action to account for increasing catch rates (as the monkfish stock grows) and reduced groundfish trip limits.

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

This framework does not substantially change the impact of the FMP on safety at sea. Adjustments to the TAC and associated trip limits in the range considered for this adjustment are not sufficiently large that would cause a vessel to modify its fishing patterns and, perhaps, increase the risks to safety.

9.2 Other Required Provisions of the MSFCMA

Section 303 of the MSFCMA contains fourteen additional required provisions for FMPs, which are discussed below. Any FMP prepared by any Council, or by the Secretary, with respect to any fishery, shall:

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are-- (A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery; (B) described in this subsection or subsection (b), or both; and (C) consistent with the National Standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

This framework adjusts the overfishing definition reference points and control rules, and associated management measures, to achieve stock rebuilding in a manner consistent with the best available scientific information. Consistency with the National Standards is discussed in the previous section.

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

The fishery and its components, including biological, social and economic aspects, were described in the Affected Environment section of the EIS accompanying the original FMP. That information has been supplemented by SAFE Reports covering FY2000 and FY2001 (Appendix I to this document).

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

The proposed action is primarily an adjustment to the overfishing definition control rule for setting annual optimum yield catch targets under the rebuilding program designed to achieve the biomass capable of producing long-term maximum sustainable yield (as measured by survey index proxies for absolute biomass levels). The specific levels for 2003, and the method used for 2003 and future years, are summarized in Section 3.1.5.2.

(4) assess and specify-- (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3); (B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and (C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

As noted in the previous paragraphs, the proposed action is primarily an adjustment to the overfishing definition control rule for setting annual optimum yield catch targets under the rebuilding program designed to achieve the biomass capable of producing long-term maximum sustainable yield (as measured by survey index proxies for absolute biomass levels). The specific levels for 2003, and the method used for 2003 and future years, are summarized in Section 3.1.5.2. Since current levels of optimum yield are well below historical catch levels, and vessels are still operating under restrictive management measures, domestic capacity is clearly capable of taking and processing optimum yield. Consequently, no portion of optimum yield is available to foreign vessels or processors.

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

The 2001 SAFE Report (Appendix I of this document) contains a full description of the fishery and processing sector as required by this provision. As required by the FMP implementing regulations, the Monkfish Monitoring Committee compiles and publishes this information annually.

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

The framework adjustment mechanism established in the FMP, under which this proposed action is taken, provides the Council with the ability to change regulations to address issues such as vessel safety within the context of the fishery management program on an annual, or as needed basis.

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

Section 5.4 contains the description of essential fish habitat and habitat assessment of the proposed action and alternatives.

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

The Council prepares annually a Stock Assessment and Fishery Evaluation (SAFE) Report. The 2001 SAFE Report is attached as Appendix I.

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on-- (A) participants in the fisheries and fishing communities affected by the plan or amendment; and (B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;

The impacts of the proposed action and alternatives, including cumulative impacts, impacts on the physical and human environments are discussed in Section 5.0 of this document.

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

The proposed action includes revisions to the threshold biomass reference point that better align the FMP with NMFS' national standards guidelines. Since both monkfish stocks were overfished at the time the FMP was implemented in 1999, the current management program is designed to rebuild the stocks to target biomass levels by 2009. Based on most recent survey data and the current threshold reference points, both stocks are no longer overfished, but, pending NMFS' likely approval of the proposed revision, the southern stock will be marginally overfished under the new threshold.

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority-- (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided;

Vessels issued a monkfish permit are required to submit Vessel Trip Reports (VTRs, logbooks) which includes reporting of discards. Additionally, the NFMS Regional Administrator may request vessels issued a monkfish permit carry an observer for the purpose of collecting catch data, including bycatch of fish and marine mammals or other protected species. In addition, the Council and the National Marine Fisheries Service are both participating in the ACCSP, which is a long-term effort to improve the collection and utility of fisheries data, including bycatch information. In addition to the general effect of increased trip limits in reducing discards of monkfish that results from catches in excess of the limit, the incidental catch limit increase on Category E vessels in the NFMA, is specifically intended to minimize bycatch.

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

Monkfish catch in recreational fisheries is not significant enough to be recorded in the recreational catch data.

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

Monkfish catch in recreational fisheries is not significant enough to be recorded in the recreational catch and vessel data. Commercial fishery sectors are described in the Affected Environment section of the EIS accompanying the original FMP and updated in the 2001 SAFE Report (Appendix I).

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

As noted under the discussion of National Standard 4, while regulations may have a differential impact on different sectors of the industry, that differential impact is not the purpose, and is done in a manner that is intended achieve the conservation and rebuilding goals of the FMP. The two-area management program is based on differences in the fisheries between the two areas, and not to allocate fishing privileges differently among sectors of the industry. The Councils note that subsequent to the findings in the 2001 Rhode Island District Court case, trawl and gillnet vessels are given the same trip limits.

10.0 Coastal Zone Management Act

The Council has made an initial determination that the proposed action is consistent to the maximum extent practicable with the approved coastal management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. This determination is being submitted for review by the responsible state agencies under §307 of the Coastal Zone Management Act concurrent with the submission of the proposed action to NMFS for review and implementation.

11.0 Paperwork Reduction Act

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

12.0 List of Preparers

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