

2.0 BACKGROUND, PURPOSE AND NEED

2.1 History of the Fishery

Until relatively recently, monkfish (goosefish or angler) was an incidental catch in groundfish and sea scallop fisheries but had little or no commercial value. In the 1960's reported landings averaged less than a million pounds and revenues from monkfish were a few hundred thousand dollars a year. During the 1970's, however, a ten-fold increase in the price of tails lead to a 17-fold increase in trips reporting landings, and in landings themselves, as gillnet and sea scallop fishermen joined trawlers in reporting landings. Further growth in the demand for tails by Europe and livers by Japan and other Asian countries (South Korea in particular) fueled growth of U.S. dockside markets into the 1990s.

In the early 1990's, fishermen and fish dealers expressed their concern about the fishery to the New England and Mid-Atlantic Fishery Management Councils. They cited the increasing proportion of small fish being targeted and, as the directed trawl fishery expanded into areas not previously fished by groundfish vessels, the growing frequency of gear conflicts between monkfish and other fisheries vessels, particularly the offshore lobster fishery.

2.2 FMP Development and Implementation

In response to those industry concerns, and scientific evidence that the stocks were under increasing pressure, such as declining survey indices and decreasing proportion of large fish in the commercial catch, the Councils jointly initiated efforts to develop an FMP with the publication in 1993 of a notice initiating the scoping process to gather public comment on issues and potential management strategies (58 *Federal Register* 7879, February 10, 1993). The Councils viewed the situation against a backdrop of rapidly rising prices for monkfish tails and livers, as well as the development of restrictive management programs in many of the region's fisheries that could potentially cause vessels to shift into the unrestricted and profitable monkfish fishery, further exacerbating the stock decline.

To discourage speculative entry into the fishery as they developed the FMP, which included a potential limited entry program, and to promote awareness of potential permit eligibility criteria, the Council published a control date on February 17, 1995 (60 *Federal Register* 10574, February 27, 1995). The Councils held public hearings took place in 1997 and again in 1998 as the plan was being finalized. The Councils submitted the 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 sizes and minimum mesh size
- gear restrictions
- spawning season closures
- a framework adjustment process
- permitting and reporting requirements
- other measures for administration and enforcement.

In recognition of the fact that much of the growth of the monkfish fishery was attributable to multispecies and scallop vessels landing monkfish caught either incidentally or as directed effort during fishing trips that were under multispecies or scallop DAS, the Councils adopted a two-tiered permit program, in which qualifying vessels that also held a multispecies or scallop limited access permit would be required to use a DAS in those respective fisheries while on a monkfish DAS. 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. 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 SFMA would have been exceeded. Consequently, the Council made no adjustment to the default regulations for Year 2 or Year 3. These regulations allocated 40 DAS for directed fishing for monkfish and imposed a trip limit by permit category and gear type. For vessels fishing in the NFMA, other than scallop dredge vessels, the regulations imposed no trip limit during Years 2 and 3, regardless of whether a vessel is on a monkfish or multispecies-only DAS.

For Year 4, starting May 1, 2002, the FMP regulations included default measures that eliminated the directed fishery (zero DAS) and reduced bycatch trip limits, unless modified during the Year 3 review and adjustment process. The default measures were postponed by Framework 1/NMFS Emergency Rule in 2002, and removed from the FMP by Framework 2 in 2003, see discussion below.

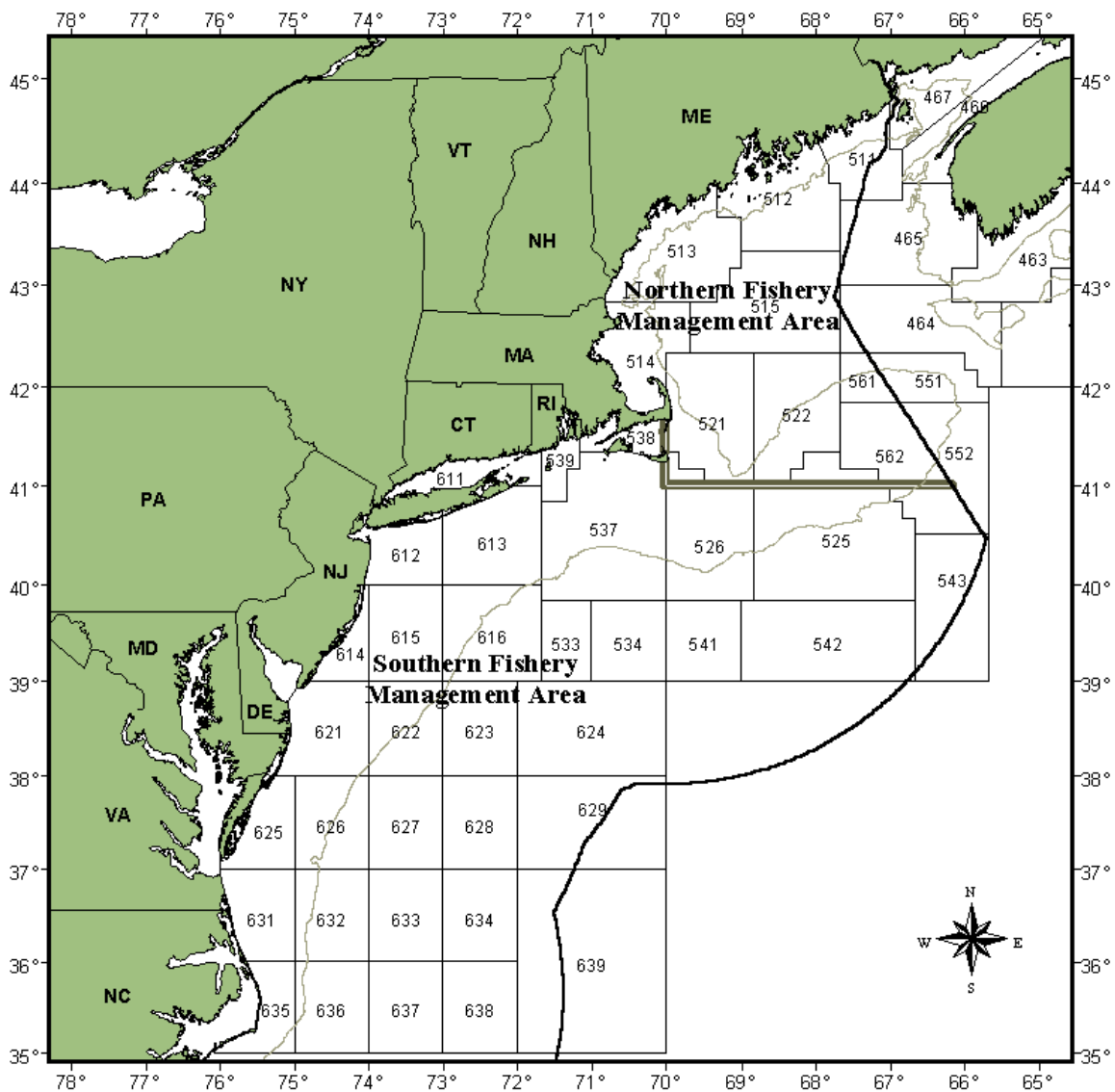


Figure 1 Monkfish fishery management areas map, showing 3-digit statistical areas.

2.3 Amendment 1

Amendment 1 was part of an omnibus amendment for multispecies, sea scallops, Atlantic salmon and monkfish FMPs submitted by the Council to comply with the Essential Fish Habitat (EFH) requirements of the Magnuson-Stevens Act (MSA). NMFS approved Amendment 1 on April 22, 1999.

2.4 Magnuson-Stevens Act Provisions on Essential Fish Habitat

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) required the National Marine Fisheries Service (NMFS) and regional Fishery Management Councils (Councils) to describe and identify essential fish habitat (EFH) within fishery management plans, minimize to the extent practicable adverse effects on EFH caused by fishing, and identify other actions to encourage the conservation and enhancement of EFH. EFH is defined in the Magnuson-Stevens Act as *“those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.”*

As required by the Magnuson-Stevens Act, NMFS developed guidelines at 50 CFR part 600, Subpart J, to assist the Councils in the description and identification of EFH and in the consideration of actions to ensure the conservation and enhancement of EFH. Section 600.815(a)(9) recommends that Councils identify habitat areas of particular concern (HAPCs) within EFH to provide greater focus for conservation and enhancement efforts. HAPCs are subsets of EFH that are especially important ecologically, sensitive to human-induced environmental degradation, stressed by development activities, and/or rare. This EIS does not include the consideration of new descriptions and identifications of EFH and new HAPCs, as the Councils will take that action in the Council's upcoming Omnibus Habitat Amendment. The NEFMC published a Notice of Intent (69 *Federal Register* 8367, February 24, 2004) and expects to complete the amendment in 2005 (see Section 2.5.2.2 below). For the purposes of this Plan Amendment, the existing and approved EFH designations and HAPCs from the Amendment 1 to the Monkfish FMP of 1998 will continue. The EFH regulations include guidelines for identifying adverse impacts from both fishing and non-fishing activities and considering the practicability of actions for minimizing adverse effects on EFH from fishing.

2.5 Fishing Years 2 and 3

2.5.1 Stock Assessments

The Northeast Fisheries Science Center conducted two monkfish stock assessments during the initial years of FMP implementation. Another assessment is scheduled for the November, 2004.

2.5.1.1 SAW 31

The 31st Stock Assessment Workshop (SAW 31), July 2000, provided the Councils with an assessment of monkfish through calendar year 1999, prior to the implementation of the FMP. SAW 31 concluded that both stocks were overfished and that overfishing was occurring, and advised that fishing mortality should be reduced. SAW 31 could not reliably estimate fishing mortality, however, and did not provide projections of stock dynamics under various assumptions of fishing mortality. The SAW also recommended that both fishing mortality rate and biomass status determination criteria in the FMP be reevaluated for consistency with NMFS' National Standards Guidelines, and for attainability with respect to the control rules implied by the FMP.

2.5.1.2 SAW 34/Cooperative Survey

The 34th Stock Assessment Workshop (SAW 34), January 2002, provided the Councils with an updated monkfish assessment through calendar year 2000, and incorporated data collected during the Cooperative Goosefish Survey, February – May 2001 to estimate fishing mortality rates. SAW 34 concluded that both northern and southern stocks were overfished, and overfishing was occurring in 2000. Despite the additional data collected during the cooperative survey, SAW 34 did not provide a point estimate for either fishing mortality or biomass, nor did it provide projections of stock size under various assumptions of fishing mortality. SAW 34 provided a range of estimates of fishing mortality (F), however, and advised that fishing mortality rates need to be reduced 20-40 percent to reach proposed fishing mortality rate threshold (F_{max}, the rate of fishing that maximizes yield per recruit), and that discards should be reduced. The SAW

recommended that the proxy fishing mortality reference points in the FMP be changed to one based on yield-per-recruit analysis, such as Fmax.

2.5.2 Court Decisions directly or indirectly affecting this FMP

2.5.2.1 Trip limit differential lawsuit (*Hall v. Evans*)

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 (*Hall v. Evans*, C.A. No. 99-549L). 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 of the Magnuson-Stevens Act. 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, the trip limits in effect for FY2001. In general, this court order has resulted in trip limits for the SFMA that are equivalent across gear types.

2.5.2.2 EFH lawsuit (*AOC v. Daley*)

Pursuant to the Magnuson-Stevens Act and the EFH regulations, the Councils submitted FMP amendments and associated Environmental Assessments (EAs), as required under the National Environmental Policy Act (NEPA), to NMFS for Secretarial review. NMFS approved or partially approved all the EFH fishery management plan amendments in accordance with section 304(a) of the Magnuson-Stevens Act. Subsequently, a coalition of seven environmental groups and two fishermen’s associations filed a lawsuit challenging NMFS’ approval of certain EFH amendments prepared by the Gulf of Mexico, Caribbean, New England, North Pacific, and Pacific Fishery Management Councils (*American Oceans Campaign et. al. v. Daley et al.*, C.A. No. 99-982(GK)). The suit specifically contested the adequacy of the evaluations of fishing gear impacts on EFH in the fishery management plan amendments, and the analyses of environmental impacts in the EAs.

The U.S. District Court for the District of Columbia found that the agency’s decisions on the subject EFH amendments were in accordance with the Magnuson-Stevens Act, but found that the EAs for the Councils’ amendments were inadequate and in violation of NEPA. The court determined that the EAs prepared for the EFH provisions of the fishery management plans did not fully consider all relevant alternatives. The court specifically criticized several of the EAs for evaluating only two options for the EFH amendments: either approval of the amendment or status quo. Additionally, the decision noted that the descriptions and analyses of the environmental impacts of the proposed actions and alternatives were vague or not fully explained. The court ordered NMFS to complete a new and thorough NEPA analysis for each EFH amendment named in the suit. This Environmental Impact Statement (EIS) responds, in part, to the court’s directive to NMFS to complete new NEPA analyses for the Monkfish FMP. Although the plaintiffs’

complaint focused on whether NMFS had adequately evaluated the effects of fishing on EFH, NMFS decided to complete new EISs to evaluate all of the EFH components of the applicable fishery management plans. Accordingly, this EIS reevaluates the impacts of amending the Monkfish FMP to include the EFH provisions required by the Magnuson-Stevens Act.

2.5.2.3 Multispecies Framework 33 lawsuit (*CLF v. Evans*)

In December 2001, the Conservation Law Foundation and other organizations successfully filed suit against NMFS alleging that the rebuilding plans the NMFS implemented were not consistent with the Multispecies Amendment 9 overfishing definitions (*Conservation Law Foundation, et al. v. Evans, et al.*). Additionally, they charged that there had been a consistent failure in management plans to assess bycatch reporting and establish measures to minimize bycatch and bycatch mortality (when bycatch is unavoidable). After a long series of negotiations among various parties, the court adopted interim measures and instructed NMFS to submit a management plan to comply with the law. In response, the NEFMC has developed Multispecies Amendment 13 to address stock rebuilding issues, greatly reduce fishing effort and capacity in the multispecies fishery, and implement additional measures to specifically address habitat protection. Since most of the monkfish permit holders also hold multispecies limited access permits, the measures adopted through Amendment 13 will affect the monkfish fishery managed under this FMP.

2.6 Framework Adjustment 1/Emergency Interim Rule

The regulations implementing the FMP required the Councils 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 remain on schedule. 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, submitted Framework 1, delaying for one year the default measures while the Councils prepared Amendment 2. 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 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 SAW 34 through an emergency interim rule (67 *Federal Register* 35928, May 22, 2002). NMFS also implemented in the emergency rule the management measures recommended by the Councils 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. 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. NMFS extended the emergency interim rule through April 30, 2003 (67 FR 67568, Nov. 6, 2002) to allow the Councils time to complete

Amendment 2. Upon expiration of the emergency interim rule, the default measures in the original FMP would take effect on May 1, 2003 unless the Councils implemented alternative rules, either through Amendment 2 or another framework adjustment.

2.7 Framework Adjustment 2

In June 2002, NMFS informed the Councils that even if they met the November 2002 submission target for Amendment 2, the agency could not guarantee that the measures would be implemented by the start of FY2003. As a result, and to forestall the default measures taking effect, the Councils agreed to put aside work on Amendment 2 and focus on Framework 2, to put in place management measures appropriate to the rebuilding plan and updated scientific information on stock status.

The Councils submitted Framework 2 in January 2003, and the rule became effective on May 1, the start of FY2003 (68 *Federal Register* 22325, April 28, 2003). The framework modified the overfishing definition reference points as recommended by SAW 34, and established an index- and landings-based method for setting annual harvest targets (TACs) to achieve optimum yield and biomass rebuilding goals. Framework 2 also eliminated the default measures established in the original FMP.

Framework 2 implemented a target TAC setting method that is based on the relationship between the 3-year running average of the NMFS fall trawl survey biomass index and annual biomass index targets that are based on 10 equal increments between the 1999 biomass index (at the start of the rebuilding program) and the biomass target reference point (B_{target}). According to this method, annual target TACs are set based on the ratio of the observed biomass index to the annual index target applied to the monkfish landings for the previous year. If the observed index is above the annual target, the TACs will be increased proportionally above the previous year's landings, to a maximum of 20 percent. If the observed index is below the annual target, the TACs is set by applying the ratio of observed/target indices to the previous year's landings. In all cases, the TACs will not be set at a level that exceeds the catch corresponding to $F=0.2$ ($F_{\text{threshold}}$).

Framework 2 also implemented a procedure for calculating trip limits and DAS allocations, once the annual target TACs are determined. In this procedure, the incidental catch of monkfish (on vessels not on a monkfish DAS) is subtracted from the target TAC. The remaining portion of the target TAC is distributed formulaically to the directed fishery based on observed effort and catch rates in the previous year. If the TAC is less than 8,000 metric tons, which would result in trip limits less than 550 lbs. and 450 lbs. (tail wt. per DAS, for Category A&C, and B&D, respectively), then trip limits are kept at that level, and DAS are reduced. This was the case in FY2004, when vessels were only allowed to use 28 DAS in the Southern Area.

2.8 Take Reduction Plans and Other Actions to Minimize Interactions with Protected Species

2.8.1 Harbor Porpoise TRP

NMFS published the rule implementing the Harbor Porpoise Take Reduction Plan (HPTRP) on December 1, 1998. The HPTRP includes measures for gear modifications and area closures, based on area, time of year, and gillnet mesh size. In general, the Gulf

of Maine component of the HPTRP includes time and area closures, some of which are complete closures; others are closures to gillnet fishing unless pingers (acoustic deterrent devices) are used in the prescribed manner. The Mid-Atlantic component includes time and area closures in which gillnet fishing is prohibited regardless of the gear specifications. Under the HPTRP, monkfish gillnets are required to comply with the requirements for large-mesh gillnets (defined as 7-18 inch mesh under the HPTRP). These include mandatory use of tie-downs and a net cap of 80 nets. The net cap is particularly relevant since the current FMP for monkfish has a net cap of 160 nets. Fishermen are required to comply with the most restrictive of all measures that apply to them. Therefore, monkfish gillnetters fishing in the Mid-Atlantic (as defined under the HPTRP) can only fish up to 80 nets (nets may be up to 300' long).

2.8.2 Atlantic Large Whale Take Reduction Plan (ALWTRP)

The ALWTRP contains a series of regulatory measures designed to reduce the likelihood of fishing gear entanglements of right, humpback, fin, and minke whales in the North Atlantic. The main tools of the plan include a combination of broad gear modifications and time/area closures (which are being supplemented by progressive gear research), expanded disentanglement efforts, extensive outreach efforts in key areas, and an expanded right whale surveillance program to supplement the Mandatory Ship Reporting System.

Key regulatory changes implemented in 2002 included: 1) new gear modifications; 2) implementation of a Dynamic Area Management system (DAM) of short-term closures to protect unexpected concentrations of right whales in the Gulf of Maine; and 3) establishment of a Seasonal Area Management system (SAM) of additional gear modifications to protect known seasonal concentrations of right whales in the southern Gulf of Maine and Georges Bank.

The most recent change to the ALWTRP, which became effective on September 25, 2003, allows lobster trap and anchored gillnet gear in a DAM zone once a closure is triggered, but specifies additional gear modifications designed to reduce the risk of entanglements of Northern right whales. A DAM zone may be identified and a closure triggered within defined areas north of 40° N. latitude.

2.8.3 NMFS Rule to Conserve Sea Turtles

NMFS published a final rule (67 *FR* 71895, December 3, 2002), effective January 2, 2003, that enacted a series of seasonal closures to the use of large mesh gillnets in the EEZ off the coast of Virginia and North Carolina. The purpose of the closures is to reduce the impact of the monkfish fishery on endangered and threatened species of sea turtles. This final rule followed several temporary actions taken by NMFS since 2000 in response to sea turtle strandings.

Federal waters between Oregon Inlet and the North Carolina/South Carolina border are closed year round, while three other areas to the north (up to Chincoteague, VA) are closed from March 16, April 1, and April 16, respectively, to January 14 each year.

2.9 Other Regulatory Actions affecting the Fishery

The majority of vessels fishing for monkfish, either as an incidental catch or a directed fishery, are also involved in a number of other fisheries in the region where regulatory action may directly or indirectly affect their operations. This section briefly summarizes actions undertaken or under consideration in three of those fisheries, Northeast Multispecies Sea Scallops and Skates.

2.9.1 Multispecies FMP Amendment 13

The Council developed Amendment 13 to the Multispecies FMP to bring the FMP into conformance with all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the amendment was published April 27, 2004 (69 *Federal Register* 22906) and become effective May 1, 2004. Amendment 13 adopted a suite of management measures to reduce fishing mortality on stocks that are either overfished, or where overfishing is occurring, and other management issues as summarized below:

- **Measures to achieve stock rebuilding**: measures designed to comply with Magnuson-Stevens Act requirements to rebuild overfished fisheries, and end overfishing where it is occurring. This includes management measures such as DAS reductions, gear restrictions, trip limits areas closures, TACs and other measures. It also includes measures that will affect the recreational fishery.
- **Measures to reduce capacity**: measures developed by the Council to control fishing capacity and potentially remove excess effort from the fishery.
- **Fishery program administration**: measures to address issues that are primarily administrative in nature, though some may have biological, social, or economic impacts. This section includes the DAS leasing alternatives.
- **Measures that minimize, to the extent practicable, adverse effects of fishing on habitat**
- **Other issues**: measures developed to alter restrictions on two exempted fisheries and one exempted gear.

For several groundfish stocks, the mortality targets adopted by Amendment 13 represented substantial reductions from existing levels. For other stocks, the targets were at or higher than existing levels and mortality could remain the same or even increase. Because most fishing trips in this fishery catch a wide range of species, it is impossible to design measures that will selectively change mortality for individual species. As a result, the management measures adopted by the amendment to reduce mortality where necessary are also expected to reduce fishing mortality unnecessarily on other, healthy stocks. As a result of these lower fishing mortality rates, yield from healthy stocks is sacrificed and the management plan may not provide optimum yield - the amount of fish that will provide the greatest overall benefit to the nation.

In order to increase the fishing effort on and yield from healthy stocks, Amendment 13 created a structure that allows for the development of programs to target healthy stocks. The amendment also included four specific programs, but only two were approved and implemented on May 1, 2004. Consequently, the NEFMC initiated Framework 40A to

the Multispecies FMP (see below). The primary purpose of FW 40A is to adopt programs that will provide additional opportunities to target healthy stocks in order to achieve optimum yield. These programs will also mitigate the economic and social impacts caused by the effort reductions adopted by Amendment 13.

Since approximately half of the monkfish permit holders also hold multispecies limited access permits, the measures adopted in Amendment 13 and Framework 40A could have a impact vessels engaged in the monkfish fishery, and on the monkfish resource (see Section 6.6.6.2).

2.9.2 Multispecies Framework 40A

The NEFMC developed Framework Adjustment 40A to the Multispecies FMP to address issues raised with the effort management, DAS, program implemented in Amendment 13. NMFS published a proposed rule for Framework 40A on September 14, 2004 (69 *Federal Register* 55389) with a comment period ending September 29.

One of the primary management measures used by Amendment 13 to control fishing mortality are DAS, which limit the time that vessels with limited access permits can fish for regulated groundfish. Amendment 13 categorized the DAS allocated to each permit as Category A, B (regular), B (reserve) or C DAS. Category A DAS can be used to target any regulated groundfish stocks, while Category B DAS are to be used only to target healthy groundfish stocks. Category C DAS cannot be used until some time in the future. The regulations implementing Amendment 13 only created one opportunity to use Category B DAS: a special access program designed to target Georges Bank yellowtail flounder in Closed Area II.

FW 40A creates additional opportunities to use Category B DAS, including Special Access Programs (SAPs), and a one-year Pilot Program for using B Regular DAS outside of the SAPs. This latter program is the one that potentially has an impact on the monkfish fishery because if the pilot program is successful, it will be a model for a future B Regular DAS management program. Under this program, multispecies vessels can target monkfish and healthy groundfish stocks, provided the quarterly TACs for the stocks of concern are not caught. Even though the total number of DAS on which multispecies vessels could target monkfish is less under this program, overall monkfish effort could increase under this program since vessels that did not direct on monkfish in past years could choose now choose to do so, since it is one of only a few stocks that would be available for targeting under a B DAS.

2.9.3 Atlantic Sea Scallop FMP Amendment 10 and Emergency Action

On November 11, 2003, the NEFMC submitted a final Amendment 10 document to the Atlantic Sea Scallop FMP (including a Final SEIS), and re-submitted a revised version on December 19. The proposed rule (69 *Federal Register* 8915, February 26, 2004) comment period ended on March 29, 2004. Since the fishing year under this FMP starts on March 1, measures adopted in Amendment 10 could not be in place at the start of the fishing year, so NMFS implemented regulations under the emergency action authority of the Magnuson-Stevens Act to protect against localized overfishing of the Hudson Canyon are during the period before the Amendment 10 rules would be effective (69 *Federal*

Register 9970, March 3, 2004). NMFS published the Amendment 10 final rule on June 23, 2004 (69 *Federal Register* 35194).

Amendment 10 includes a comprehensive, long-term program to manage the sea scallop fishery through an area rotation management program to maximize scallop yield. The program includes a flexible boundary, adaptive area rotation system, beginning with a new closure off the Maryland coast. The rotation plan also continues the controlled access program for the Hudson Canyon Area and initiates mechanical rotation in parts of the Georges Bank closed areas, although access to the Georges Bank areas. This latter provision required approval of a groundfish framework adjustment to address groundfish bycatch concerns (see Scallop Framework 16/Multispecies Framework 39, below). Other features of the area rotation system include an expanded at-sea observer program and scallop-related research, both of which would be funded by scallop set-aside programs.

In addition to the rotational management program, Amendment 10 implemented an increase in twine top mesh from 8 to 10-inches and an increase in minimum dredge ring size from 3½ inches to 4-inches diameter. These changes will reduce bycatch and improve dredge efficiency while increasing the catch of larger sea scallops. It is expected that the larger ring will reduce bottom contact time per day and potentially reduce adverse effects on essential fish habitat. Amendment 10 also adopts a habitat closure, using portions of the groundfish closed areas, that would apply to vessels fishing with scallop gear until subsequent action is taken to replace or modify these areas. The Amendment also updated DAS allocations and allocated area-specific DAS and trip limits in controlled-access areas.

2.9.4 Scallop Framework 16/Multispecies Framework 39

The NEFMC developed Framework Adjustment 16/39, to the Scallop and Multispecies FMP, respectively, to address and implement scallop area management in parts of the groundfish closed areas. NMFS published a proposed rule for Framework 16/39 on August 26, 2004 (69 *Federal Register* 52470) and a final rule on November 2 (69 *FR* 63460).

Scallop biomass in portions of these areas has increased to high levels as a result of the closure to scallop fishing since 1994 to achieve groundfish mortality and rebuilding objectives. Although the Council wanted to allow controlled scallop fishing access starting with the 2004 fishing year, the specific issues associated with scallop fishing in the groundfish mortality closed areas were too complex and controversial to incorporate into Scallop FMP Amendment 10. Instead, Framework Adjustment 16/39 focuses on these issues, considering and analyzing the potential effects of alternatives to achieve the Scallop FMP goals with area rotation, without causing unacceptable impacts for groundfish habitat and bycatch.

Alternatives associated with Framework Adjustment 16 focus on allocations of fishing effort and scallop TACs, provisions to fund observers and research, enforcement provisions, and monitoring requirements. Alternatives associated with Framework Adjustment 39 focus on measures to minimize or control bycatch, including when and where scallop fishing may occur, as well as a limit on how much bycatch would be allowed. The joint framework also revises the EFH closures implemented in Amendment

10 (Scallops) to make them consistent with those implemented in Amendment 13 (Multispecies).

As noted in the Framework 16/39 submission document, scallop dredges often catch monkfish targeting sea scallops in many areas, and monkfish have been a significant part of the vessel's revenue at various times over the last 15 years. In fact, when scallop catches and revenue were low, many limited access scallop vessels have a history of targeting monkfish with scallop dredges. Because of this and the low survivability of monkfish after discarding, the Monkfish FMP allocates fairly generous trip limits for vessels on a scallop DAS, 300 lbs. tail-weight per DAS. In addition, some scallop vessels qualify for a limited access monkfish permit that allows them to catch and land more than this limit for 40 DAS to be counted against the limited access scallop DAS allocation.

Monkfish appear to be nearly as abundant within the access areas as they are elsewhere, based on the estimated bycatch in the 2000 access program. No targeting of monkfish was observed and targeting monkfish with a controlled access DAS is very unlikely due to the high catches of more-valuable scallops. With the proposed action and alternative rotation schedule, the daily catch rate is expected to vary between 175 to 332 lbs./day during 2004-2007. These are estimates of annual average catches per DAS, so conditions and catches will vary on individual trips made at various times of the year. Nonetheless, increases in discarding of monkfish are not expected because the catches are not substantially greater than the daily monkfish possession limit that applies on a limited access scallop DAS. Monkfish catches may decline overall, however, due to reductions in total fishing time that are anticipated under the access programs.

2.9.5 Skate FMP

On August 19, 2003, NMFS published regulations implementing the Skate FMP submitted by the NEFMC (68 *Federal Register* 46963). The purpose of the FMP is to implement permanent management measures for the northeast skate fisheries to prevent overfishing of skate resource. These regulations include the following measures: A possession limit for skate wings; a bait-only exemption to the wing possession limit restrictions; a procedure for the development, revision, and/or review of management measures on an annual, biennial, and inter-annual basis, including a framework adjustment process; open access permitting requirements for fishing vessels, operators, and dealers; new species-level reporting requirements for skate vessels and dealers; new discard reporting requirements for Federal vessels; and prohibitions on possessing smooth skates in the Gulf of Maine (GOM) Regulated Mesh Area (RMA), and thorny skates and barndoor skates throughout the management unit.

The Skate FMP identified and characterized a baseline of seven management measures in other fisheries that provide additional conservation benefits to skate species. If the Council initiates an action in another FMP that changes one of the seven baseline measures such that the change is likely to have an effect on the overall mortality for a species of skate in a formal rebuilding program, then the Skate FMP requires a baseline review. Of the seven skate species managed under the Northeast Skate Complex FMP, only two species are in a formal rebuilding program: thorny and barndoor.

Monkfish DAS restrictions for monkfish only permit holders, Multispecies DAS restrictions and Scallop DAS restrictions are three of the seven baseline management measures identified in the Skate FMP that reduce impacts on skate mortality. Since the Councils considered in this amendment measures that would decouple Monkfish and Multispecies/ Scallop DAS, resulting in a potential increase in overall effort levels, the Skate PDT is required to evaluate the potential impacts of this change on the overall mortality of thorny and barndoor skate. All other measures proposed in Amendment 2 do not change any of the baseline measures identified in the Skate FMP, thus the skate baseline review is only triggered by the alternative to decouple Monkfish and Multispecies/Scallop DAS. Since the Councils rejected the proposal to decouple DAS usage requirements, the Skate Baseline Review appears under the section discussing impacts of non-preferred alternatives (Section 6.2.2.2).

2.10 Notice of Intent and Scoping

The Councils published a Notice of Intent to prepare an SEIS and formally initiate scoping on this amendment on December 10, 2001 (66 *FR* 63666). See Section 8.1.2 for information regarding the scoping process for this amendment, including scoping on the EFH components.

2.11 Summary of Current FMP Regulations

The following tables summarize the regulations in effect under the current FMP through Framework 2.

FMP Element	NFMA	SFMA
Target TAC	Calculated annually based on two factors: 1) three year running average fall survey biomass index compared to annual biomass rebuilding target 2) previous year landings If F is known, TAC is set to not exceed F threshold.	Same as NFMA
DAS	40	40, or lower if trip limit is calculated to be less than 550/450 lbs. tails/DAS on Cat. A, C & B,D, respectively. For FY2004, vessels will have 28 DAS to fish in the SFMA.
Liver landings	Maximum of 25% of wt. of tails or 10% of wt. of whole MF	Same as NFMA
Minimum fish size	11" tail, 17" whole	14" tail, 21" whole
Minimum mesh size on MF DAS	Trawl: 10" sq/12" dia. codend; Gillnet: 10"	Same as NFMA
Area Declaration	Must declare into NFMA for minimum of 30 days to fish under less restrictive measures (trip limits, minimum fish size); to be adjusted to 7 days by technical amendment	
Exempted Fishery	Must fish on a Multispecies or Scallop DAS or in an Exempted Fishery (gillnet only)	Must fish on a Multispecies or Scallop DAS or in an Exempted Fishery
Trip limits and Incidental Catch limits see table below.		

Table 6 Summary of current FMP regulations

Permit Category	DAS Program	Area	Gear ¹	Trip/Incidental Catch Limit ² (tail weight per DAS)
A, B, C, or D	Monkfish	NFMA	All Gear	No trip limit
A or C	Monkfish	SFMA	All Gear	550 lb (FY2004, adjusted annually)
B or D	Monkfish	SFMA	All Gear	450 lb (FY2004, adjusted annually)
C or D	Multispecies	NFMA	All Gear	No trip limit
C or D	Multispecies	SFMA	Trawl	300 lb
C or D	Multispecies	SFMA	Non-trawl	50 lb
C or D	Scallop	NFMA & SFMA	Dredge or net exemption	300 lb
E (incidental)	Multispecies	NFMA	All Gear	400 lb, or 50% of total weight of fish on board, whichever is less
E (incidental)	Multispecies	SFMA	All Gear	50 lb
E (incidental)	Scallop	NFMA & SFMA	Dredge	300 lb
A, B, C, D, or E	No DAS	NFMA & SFMA	Large Mesh ³	Up to 5% of total weight of fish on board per trip ⁴
A, B, C, D, or E	No DAS	NFMA & SFMA	Small Mesh ⁵ or Handgear	50 lb of tail weight per trip
C, D, or E vessels that are <30 feet with a multispecies limited access permit	No DAS	NFMA & SFMA	All Gear	50 lb of tail weight per trip

¹Dredge gear is prohibited unless fishing under a Scallop DAS

² Or the whole-weight equivalent (tail weight x 3.32)

³Greater than or equal to the minimum NE multispecies mesh size for the Gulf of Maine, Georges Bank and Southern New England Regulated Mesh Areas, and minimum summer flounder mesh size for the Mid-Atlantic Regulated Mesh Area

⁴Can land whole monkfish or monkfish tails, but the weight of all monkfish on board is converted to tail weight.

⁵Less than the regulated mesh size as specified under footnote 3.

Table 7 Summary of current monkfish trip limits and incidental catch limits

2.12 Purpose and Need

The purpose of the amendment is to achieve the goals and objectives outlined in Section 3.2 below. The need for this action includes problems and issues that have arisen since, or as a result of the FMP implementation, as discussed below; court decisions and orders on elements of the plan as outlined in Section 2.5.2, particularly EFH (*AOC v. Daley*); actions taken in other fisheries that affect the monkfish fishery, as detailed in Section 2.9; and federal guidelines on the periodic updating of environmental documents and the content of fishery management plans, in particular the Council on Environmental Quality's "Forty Most Asked Questions Concerning CEQ's NEPA Regulations" (question 32).

This SEIS responds, in part, to the court's directive in the EFH lawsuit (*AOC v. Daley*) that NMFS complete new NEPA analyses for the Monkfish Fishery Management Plan. This amendment will minimize, to the extent practicable, the adverse effects of fishing on essential fish habitat to comply with section 303(a)(7) of the Magnuson-Stevens Act. More specifically, one purpose of the amendment is to identify and describe adverse effects of fishing on EFH and to minimize to the extent practicable these adverse effects. Although the plaintiffs' complaint focused on whether NMFS had adequately evaluated the effects of fishing on EFH, NMFS decided to complete new EIS's to evaluate all of the EFH components of the applicable fishery management plans. Accordingly, this SEIS reevaluates the impacts of amending the Monkfish FMP to include the EFH provisions required by the Magnuson-Stevens Act.

As noted, in addition to the issues raised in the lawsuits discussed above and in Section 2.5.2, the implementation of the FMP created several circumstances and situations which members of the public identified prior to and during the scoping process as problematic or unfair. In particular, the Councils received the following comments (summarized or paraphrased):

- During the course of development of the Monkfish FMP, a fishery for monkfish developed south of the border separating Virginia and North Carolina. A small number of North Carolina and Virginia vessels began participating in this fishery shortly after publication of the monkfish limited access permit control date (February 27, 1995). The monkfish season in this area runs from mid-March to June. These southern vessels did not possess other federal northeast fishery permits and, therefore, did not receive timely notices and other information about limited access proposals contained in the Monkfish FMP. In addition, the southern boundary of the fishery management unit initially proposed for monkfish was the border separating Virginia and North Carolina. Although this southern boundary was twice modified (the final boundary was extended southward to the North Carolina and South Carolina border) before public hearings, the Monkfish FMP public hearing document described the management unit, and hence the limited access proposal, as terminating at the Virginia and North Carolina border, not south of that line where much of the affected fishery takes place.
- NMFS disapproved the "running clock" provision that would have enabled vessels to exceed their per-day trip limit and then run out the

commensurate DAS time while at the dock. This action, in combination with the requirement for Category C and D vessels to use a multispecies or scallop DAS when on a monkfish DAS, made offshore monkfish trawl trips unprofitable, especially in years when the trip limit was set relatively low. Members of the industry appealed to the Councils to restore the offshore fishery to a level of profitability within the requirements of the rebuilding program.

- Several individuals commented that the minimum fish size was contributing to discards, particularly on trips where vessels were using multispecies regulated mesh, rather than the larger mesh required on monkfish (but not multispecies) DAS
- Industry members requested the Council to implement the same exemptions for fishing outside the EEZ that already exist in the Multispecies FMP, so that vessels could investigate and promulgate a fishery in the NAFO Regulated Area.
- When the FMP was first implemented, numerous members of the affected public commented that the plan was extremely complicated and difficult to understand. Over the course of the next couple of years, however, the same individuals commented that the plan was more understandable than initially thought and that compliance at the vessel level was not so difficult once the operator learned the specific regulations that applied to his/her situation.

In April 2002, one conservation organization submitted comments on proposed Framework 1 expressing its concerns and issues with the Monkfish FMP. In responding to comments on the Emergency Interim rule, NMFS noted that those issues would be addressed in Amendment 2 which at that time was under development. In April 2003, as the Councils were finalizing the range of alternatives to be considered in the DSEIS, the organization re-submitted those comments and asked that they be addressed in Amendment 2. Those comments focused on three areas: improving data collection and research, especially in regards to bycatch; minimizing bycatch in the directed and incidental catch fisheries; and minimizing impacts of the monkfish fishery on designated EFH. The Councils note that these issues have been identified in the goals and objectives and form the basis for many of the alternatives considered.

2.13 Amendment 2 Public Comment Period and Hearings

NMFS published a Notice of Public Hearings and Request for Comments on May 28, 2004 (69 *Federal Register* 30624, May 28, 2004), announcing a 90-day comment period. The Councils held six public hearings, as follows:

DATE	LOCATION
June 15	Wading River, NY
June 16	Toms River, NJ
June 17	Manteo, NC
June 22	Fairhaven, MA
June 23	Peabody, MA
June 24	Portland, ME

Appendix III contains the hearing summaries and written comments, including a table summarizing the written comments received during the comment period, as well as late