

§ 648.92

50 CFR Ch. VI (10–1–07 Edition)

a mesh size no smaller than that specified in paragraph (c)(1)(i) of this section.

(2) *Other gear restrictions.* (i) A vessel may not fish with dredges or have dredges on board while fishing under a monkfish DAS.

(ii) All other non-conforming gear must be stowed as specified in § 648.23(b).

(iii) The mesh size restrictions in paragraph (c)(1) of this section do not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 ft² (0.81 m²)).

(3) *SFMA trawl roller gear restriction.* The roller gear diameter on any vessel on a monkfish DAS in the SFMA may not exceed 6 inches (15.2 cm) in diameter.

[64 FR 54747, Oct. 7, 1999, as amended at 65 FR 37917, June 19, 2000; 67 FR 50323, Aug. 1, 2002; 70 FR 21942, Apr. 28, 2005]

EFFECTIVE DATE NOTE: At 72 FR 53949, Sept. 21, 2007, § 648.91 was amended by revising paragraph (c)(1)(iii), effective Oct. 22, 2007. For the convenience of the user, the revised text is set forth as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(1) * * *

(iii) *Gillnets while on a monkfish DAS.* The minimum mesh size for any gillnets used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) diamond mesh, unless otherwise provided for under § 648.92(b)(1)(iii)(B).

* * * * *

§ 648.92 Effort-control program for monkfish limited access vessels.

(a) *General.* A vessel issued a limited access monkfish permit may not fish for, possess, retain, or land monkfish, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, except as otherwise provided in this part.

(1) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that

have unused DAS on the last day of April of any year may carry over a maximum of 10 unused DAS into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

(2) [Reserved]

(b) *Monkfish DAS program—permit categories and allocations—(1) Limited access monkfish permit holders—* (i) *General provision.* All limited access monkfish permit holders shall be allocated monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless modified by paragraph (b)(1)(ii) of this section according to the provisions specified at § 648.96(b)(3). The number of monkfish DAS to be allocated, before accounting for any such modification, is 40 DAS minus the amount calculated in paragraph (b)(1)(iv) of this section, unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iii) of this section. Limited access NE multispecies and limited access sea scallop DAS permit holders who also possess a valid limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with their monkfish DAS, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

(ii) FY 2006 DAS restrictions for vessels fishing in the SFMA. For the 2006 fishing year, limited access monkfish vessels are restricted to utilizing only 12 of their 40 monkfish DAS allocation in the SFMA. If a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS will presume that any monkfish DAS used was fished in the SFMA.

(iii) *Offshore Fishery Program DAS allocation.* A vessel issued a Category F permit, as described in § 648.95, shall be allocated a prorated number of DAS as specified at § 648.95(g)(2).

(iv) *Research DAS set-aside.* A total of 500 DAS will be set aside and made available for cooperative research programs as described in paragraph (c) of

this section. These DAS will be deducted from the total number of DAS allocated to all monkfish limited access permit holders, as specified under paragraph (b)(1)(i) of this section. A per vessel deduction will be determined as follows: Allocated DAS minus the quotient of 500 DAS divided by the total number of limited access permits issued in the previous fishing year. For example, if the DAS allocation equals 40 DAS and if there are 750 limited access permits issued in FY 2004, the number of DAS allocated to each vessel in FY 2005 will be 40 DAS minus (500 DAS divided by 750 permits), or 40 DAS minus 0.7 DAS, or 39.3 DAS.

(2) *Category C, D, F, G, or H limited access monkfish permit holders.* (i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under §648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies Category A DAS would also be used. However, after all 30 NE multispecies Category A DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel

and does not retain any regulated NE multispecies. A vessel holding a Category C, D, F, G, or H limited access monkfish permit may not use a NE multispecies Category B DAS in order to satisfy the requirement of this paragraph (b)(2)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

(ii) *Category C, D, F, G, or H vessels that lease NE multispecies DAS.* (A) A monkfish Category C, D, F, G, or H vessel that has "monkfish-only" DAS, as specified in paragraph (b)(2)(i) of this section, and that leases NE multispecies DAS from another vessel pursuant to §648.82(k), is required to fish its available "monkfish-only" DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C, D, F, G, or H vessel that leases DAS to another vessel(s), pursuant to §648.82(k), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining NE multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated NE multispecies DAS, leased 10 of its NE multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 NE multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

(iii) *Category C and D vessels that lease NE multispecies DAS.* (A) A monkfish Category C or D vessel that has "monkfish-only" DAS, as specified in paragraph (b)(2)(ii) of this section, and that leases NE multispecies DAS from another vessel pursuant to §648.82(k), is required to fish its available "monkfish-only" DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C or D vessel which leases DAS to another vessel(s), pursuant to §648.82(k), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the

difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS—37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

(3) *Accrual of DAS.* Same as §648.53(e).

(4) *Good Samaritan credit.* Same as §648.53(f).

(5) [Reserved]

(6) *Declaring monkfish DAS.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the monkfish DAS program using the notification requirements specified in §648.10.

(7) *Adjustments in annual monkfish DAS allocations.* Adjustments in annual monkfish DAS allocations, if required to meet fishing mortality goals, may be implemented pursuant to the framework adjustment procedures of §648.96.

(8) *Gillnet restrictions—*

(i) *Number and size of nets.* (A) *Category A and B vessels.* A vessel issued a monkfish limited access Category A or B permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 160 gillnets. Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

(B) *Category C, D, F, G, and H vessels that possess a limited access NE multispecies permit.* A vessel issued a valid monkfish limited access Category C, D, F, G, or H permit that possesses a valid limited access NE multispecies permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 150 gillnets. A vessel issued a NE multispecies limited access permit and a limited access monkfish permit, and fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 150 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of §648.82. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

(ii) *Tagging requirements.* Beginning May 1, 2000, all gillnets fished, hauled, possessed, or deployed by a vessel fishing for monkfish under a monkfish DAS must have one monkfish tag per net, with one tag secured to every other bridle of every net within a string of nets. Tags must be obtained as described in §648.4. A vessel operator must account for all net tags upon request by an authorized officer.

(iii) *Lost tags.* A vessel owner or operator must report lost, destroyed, or missing tag numbers by letter or fax to the Regional Administrator within 24 hours after tags have been discovered lost, destroyed, or missing.

(iv) *Replacement tags.* A vessel owner or operator seeking replacement of lost, destroyed, or missing tags must request replacement tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received before the tags will be re-issued.

(v) *Method of counting DAS.* A vessel fishing with gillnet gear under a monkfish DAS will accrue 15 hours monkfish DAS for each trip greater than 3 hours but less than or equal to 15 hours. Such vessel will accrue actual monkfish DAS time at sea for trips less than or equal to 3 hours or greater than 15 hours. A vessel fishing with gillnet gear under only a monkfish DAS is not required to remove gillnet gear from the water upon returning to the dock and calling out of the DAS program, provided that the vessel complies with the requirements and conditions of paragraphs (b)(8)(i), (ii), (iii), (iv), and (v) of this section.

(9) *Category G and H limited access permit holders.* (i) Vessels issued limited access Category G and H permits shall be restricted to fishing on a monkfish DAS in the area south of 38°20' N. lat.

(ii) Vessels issued valid limited access monkfish Category G or H permit that also possess a limited access NE multispecies or limited access scallop permit are subject to the same provisions as Category C or D vessels, respectively, unless otherwise stated under this subpart F.

(10) *Limited access monkfish permit holders—*(i) *General provision.* Limited access monkfish permit holders shall be allocated 31 monkfish DAS for FY

Fishery Conservation and Management

§ 648.92

2007 to be used in accordance with the restrictions of this paragraph (b), unless otherwise restricted by paragraph (b)(10)(ii) of this section, or unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(10)(iii) of this section. The annual allocation of monkfish DAS shall be reduced by the amount calculated in paragraph (b)(1)(iv) of this section for the research DAS set-aside. Limited access NE multispecies and limited access sea scallop permit holders who also possess a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

(ii) *DAS restrictions for vessels fishing in the SFMA.* Limited access monkfish vessels may only use 12 of their 31 monkfish DAS allocation in the SFMA. All limited access monkfish vessels fishing in the SFMA must declare that they are fishing in this area through the vessel call-in system or VMS prior to the start of every trip. In addition, if a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS shall presume that any monkfish DAS used were fished in the SFMA.

(iii) *Offshore Fishery Program DAS allocation.* A vessel issued a Category F permit, as described in § 648.95, shall be allocated a prorated number of monkfish DAS as specified in § 648.95(g)(2).

(iv) *Research DAS set-aside.* A total of 500 DAS shall be set aside and made available for cooperative research programs as described in paragraph of this section. These DAS shall be deducted from the total number of DAS allocated to all limited access monkfish permit holders, as specified under paragraph (b)(10)(i) of this section. A per vessel deduction shall be determined as follows: Allocated DAS minus the quotient of 500 DAS divided by the total number of limited access permits issued in the previous fishing year. For example, if the DAS allocation equals 31 DAS and there were 750 limited access monkfish permits issued during FY 2006, the number of DAS allocated

to each vessel during FY 2007 would be 31 DAS minus 0.7 (500 DAS, divided by 750 permits), or 30.3 DAS.

(11) *Category G and H limited access permit holders.* (i) Vessels issued limited access monkfish Category G or H permits may fish under a monkfish DAS only in the area south of 38°40' N. lat.

(ii) Vessels issued a valid limited access monkfish Category G or H permit that also possess a limited access NE multispecies or limited access scallop permit are subject to the same provisions as Category C or D vessels, respectively, unless otherwise stated under this subpart F.

(c) *Monkfish Research—(1) DAS Set-Aside Program.* (i) NMFS will publish a Request for Proposals (RFP) in the FEDERAL REGISTER at least 3 months prior to the start of the upcoming fishing year, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the Councils.

(ii) NMFS shall convene a review panel that may include members of the Councils' Monkfish Oversight Committee, the Council's Research Steering Committee, and other technical experts, to review proposals submitted in response to the RFP.

(A) Each panel member shall recommend which research proposals should be authorized to utilize the research DAS set aside in accordance with paragraph (b)(1)(iv) of this section, based on the selection criteria described in the RFP.

(B) The Regional Administrator shall consider each panel member's recommendation, provide final approval of the projects, and notify applicants of the grant award through written notification to the project proponent. The Regional Administrator may exempt selected vessel(s) from regulations specified in each of the respective FMPs through the exempted fishing permit (EFP) process specified under § 600.745(b)(2).

(iii) The grant awards approved under the RFPs shall be for the upcoming fishing year. Proposals to fund research that would start prior to the fishing year are not eligible for consideration. Multi-year grant awards may

be approved under an RFP for an upcoming fishing year, so long as the research DAS available under subsequent RFPs are adjusted to account for the approval of multi-year awards. All research trips shall be completed within the fishing year(s) for which the research grant was awarded.

(iv) Research projects shall be conducted in accordance with provisions approved and provided in an EFP issued by the Regional Administrator, as authorized under §600.745(b)(2).

(v) If the Regional Administrator determines that the annual allocation of research DAS will not be used in its entirety once all of the grant awards have been approved, the Regional Administrator shall reallocate the unallocated research DAS as exempted DAS to be authorized as described in paragraph (c)(2) of this section, and provide notice of the reallocation of DAS in the FEDERAL REGISTER. Any unused research DAS may not be carried over into the next fishing year.

(vi) For proposals that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(2) *DAS Exemption Program.* (i) Vessels that seek to conduct monkfish research within the current fishing year, and that were not selected in the RFP process during the previous fishing year, may seek exemptions from monkfish DAS for the purpose of conducting exempted fishing activities, as authorized at §600.745(b), under the following conditions and restrictions:

(A) The request for a monkfish DAS exemption must be submitted along with a complete application for an EFP to the Regional Administrator. The requirements for submitting a complete EFP application are provided in §600.745(b)(2);

(B) Exempted DAS must be available for usage. Exempted DAS shall only be made available by the Regional Administrator if it is determined that the annual set-aside of research DAS will not be used in its entirety, as described in

paragraph (c)(1)(v) of this section. If exempted DAS are not available for usage, the applicant may continue to seek an exemption from monkfish DAS, but may be required to conduct an analysis of the impacts associated with the monkfish DAS exemption request before issuance of the EFP application will be considered; and

(C) For EFP applications that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(ii) Monkfish DAS exemption requests shall be reviewed and approved by the Regional Administrator in the order in which they are received.

[64 FR 54748, Oct. 7, 1999, as amended at 67 FR 50323, Aug. 1, 2002; 68 FR 4114, Jan. 28, 2003; 68 FR 22329, Apr. 28, 2003; 69 FR 18293, Apr. 7, 2004; 69 FR 22988, Apr. 27, 2004; 70 FR 21942, 22244, Apr. 28, 2005; 70 FR 76429, Dec. 27, 2005; 71 FR 23874, Apr. 25, 2006; 71 FR 62196, Oct. 23, 2006]

EFFECTIVE DATE NOTE: 1. At 72 FR 20958, Apr. 27, 2007, §648.92 was amended by suspending paragraphs (a)(1), (b)(1), and (b)(9), and adding paragraphs (b)(10) and (b)(11), effective May 1, 2007 through Oct. 27, 2007. At 72 FR 53942, Sept. 21, 2007, the expiration date was changed to Oct. 22, 2007.

EFFECTIVE DATE NOTE: 2. At 72 FR 53949, Sept. 21, 2007, §648.92 was amended by removing paragraph (b)(2)(iii), and revising paragraphs (b)(1), (b)(2)(i), (b)(2)(ii)(B), and (b)(9)(i), effective Oct. 22, 2007. For the convenience of the user, the revised text is set forth as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) *Limited access monkfish permit holders—*
 (i) *General provision.* Limited access monkfish permit holders shall be allocated 31 monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless otherwise restricted by paragraph (b)(1)(ii) of this section or modified by §648.96(b)(3), or unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iv) of this section. The annual allocation of monkfish DAS shall be reduced by