



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

DATE: November 3, 2024

MEMORANDUM FOR: Michael Pentony
Regional Administrator

FROM: Sharon Benjamin
NEPA Policy Analyst

THROUGH: Tim Cardiasmenos
NEPA Coordinator

SUBJECT: Final Clearance of the Environmental Assessment for the Framework Adjustment 15 to the Monkfish Fishery Management Plan;
Framework Adjustment 6 to the Spiny Dogfish Fishery Management Plan

Thank you for the opportunity to review the subject documents. All comments provided on the subject Environmental Assessment (EA) have been adequately addressed. National Environmental Policy Act (NEPA) staff reviewed the Finding of No Significant Impact (FONSI) for the subject EA. We have determined that it complies with the requirements of NEPA and recommend you concur by signing below. We have no further comment on the EA or FONSI statement.

cc:

John Almeida, GCNE
Jerome Hermsen, SFD
Peter Christopher, SFD
Spencer Talmage, SFD

1. I concur. _____
Date

2. I do not concur. _____
Date



Finding of No Significant Impact for Framework Adjustment 15 to the Monkfish Fishery Management Plan; Framework Adjustment 6 to the Spiny Dogfish Fishery Management Plan

Unique ID number: 45471.633

November 2024

I. Purpose of Finding of No Significant Impact (FONSI): The National Environmental Policy Act (NEPA) requires the preparation of an Environmental Impact Statement (EIS) for any proposal for a major Federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(C). Agencies may issue a FONSI if they determine that a proposed agency action will not have a significant effect on the human environment and therefore does not require the issuance of an EIS. *Id.* § 4336e(7); 40 C.F.R. § 1500.5(b). The Council on Environmental Quality (CEQ) regulations direct agencies to examine both the context of the proposed action and the intensity of the effect to determine whether an adverse effect of such action is significant. 40 C.F.R. § 1501.3(d).

Agencies must examine the significance of the action in several contexts, including the characteristics of the geographic area, such as proximity to unique or sensitive resources or communities with environmental justice concerns; the potential global, national, regional, and local contexts (as appropriate); as well as the duration, including short- and long-term effects. *Id.* § 1501.3(d)(1). In examining the intensity of the effect, CEQ identifies several specific criteria for consideration. *Id.* § 1501.3(d)(2). Each criterion is discussed below with respect to the proposed action and considered individually as well as in combination with the others.

In preparing this FONSI, we reviewed the Final Environmental Assessment for Framework Adjustment 15 to the Monkfish Fishery Management Plan; Framework Adjustment 6 to the Spiny Dogfish Fishery Management Plan (EA), which evaluates the affected environment and the environmental effects of the proposed action and alternatives (including the duration of impact, and whether the impacts were adverse and/or beneficial and their magnitude). The EA is hereby incorporated by reference. 40 C.F.R. § 1501.6(c).

II. Approach to Analysis

The proposed action is not expected to meaningfully contribute to a significant effect based on the scale of impacts. This action establishes a set of area-based gear restrictive measures in the Federal gillnet fisheries for monkfish and spiny dogfish designed to reduce bycatch of Atlantic sturgeon in these fisheries. Specifically, the action:

- Requires vessels fishing on a monkfish day-at-sea (DAS) within an area referred to as the New Jersey Atlantic Sturgeon Bycatch Reduction Area to use low-profile gillnet gear, beginning on January 1, 2026;
- Requires federally permitted spiny dogfish vessels fishing in the New Jersey Atlantic Sturgeon Bycatch Reduction Area with roundfish gillnets (not tie-down gillnets) with a mesh size of 5 to 10 inches to remove nets from the water by 8:00 pm each day until 5:00

am Eastern Standard Time (EST) the following day during the months of May and November; and

- Requires federally permitted spiny dogfish vessels fishing in the Delaware and Maryland Atlantic Sturgeon Bycatch Reduction Area or Virginia Atlantic Sturgeon Bycatch Reduction Area with roundfish gillnets (not tie-down gillnets) with a mesh size of 5.25 to 10 inches to remove nets from the water by 8:00 pm each day until 5:00 am EST the following day from November 1 through March 31.

Exact definitions for the Atlantic Sturgeon Bycatch Reduction Areas are available in Section 4 of the EA.

Though the area-based gear restrictive measures in this proposed action are novel for the Monkfish and Spiny Dogfish FMPs, they are consistent with other management measures in those FMPs and similar to management measures implemented in other FMPs that affect the monkfish and dogfish fisheries. For example, the Northeast Multispecies FMP includes measures that require the use of selective gear in certain areas or when certain criteria are met. These management schemes generally help to rebuild stocks and ensure long-term sustainability, while minimizing environmental impacts by the fishery.

The Magnuson-Stevens Fishery Management and Conservation Act (MSA) requires that management actions be taken only after consideration of the impacts to the biological, physical, economic, and social dimensions of the human environment. Effects on all Valued Ecosystem Components (VEC) from past, present, and reasonably foreseeable future actions are positive and are expected to continue in that manner for the foreseeable future. There are some negative effects described in this EA, but when considered holistically, and due to the management measures implemented in these fisheries, the overall long-term trend is slight positive.

There are no significant cumulative effects associated with the preferred alternatives based on the information and analyses presented in this document and in past FMP documents. Cumulatively, through 2028, it is anticipated that the proposed action will result in non-significant impacts on all VECs, ranging from slight negative to slight positive.

The measures included in this proposed action do not result in individual impacts on any specific VEC with a magnitude greater than moderate, and are consistent with management measures implemented in the past for other fisheries in the region. As discussed in Sections 6.1 through 6.6 of the EA, the proposed action is expected to have: Negligible to slight positive effects on monkfish and spiny dogfish stocks; slight negative to slight positive effects on non-target managed fish species; negligible to slight negative effects on the physical environment and Essential Fish Habitat (EFH); slight negative to slight moderate positive effects on protected resources; and slight negative to slight positive effects on human communities. When taken in combination, there is no reason to believe that multiple-effects conclusions of less than major would result in significant impacts. The measures proposed in this action are more restrictive and do slightly modify behavior from status quo, in that they require the monkfish fishery to use a modified, selective gillnet within a particular area, and that they prohibit the dogfish fishery from deploying gillnet gear overnight within a series of areas. However, these changes do not fundamentally change the characteristics of the fishery such that the magnitude of impacts to any VEC would increase to significance.

III. Context:

This action is regional in extent. The monkfish fishery in U.S. waters extends from Maine to North Carolina out to the continental shelf margin and is assessed and managed in two areas, northern and southern. The dogfish fishery and corresponding management unit extends to all U.S. east coast waters. Both fisheries are jointly managed by the New England and Mid-Atlantic Fishery Management Councils.

The particular measures in this proposed action are area-based; they would not take effect throughout the entire management unit or set of management units for these fisheries. A full description of the areas established for this proposed action are available in Section 4 of the EA.

The resources present throughout this region with the potential to be impacted by this monkfish and dogfish fishery management action are described in Section 5 of the EA. The measures proposed in this action for the monkfish fishery are in effect year-round, while the measures proposed in this action for the dogfish fishery are seasonal in nature. The fisheries and their impacts as a whole, however, are spread across a broad region throughout the year. In part due to the wide geographic and temporal range of fishing activity, in the context of the species and other VECs concerned in this action, the environmental effects analyzed in the EA would be dispersed throughout the region. These effects are not expected to result in substantial changes to any VECs or specific geographical areas.

IV. Intensity:

In evaluating the effects of the proposed action, the intensity of potential effects was considered, including:

1) The degree of reasonably foreseeable adverse effects on public health and safety;

Potential impacts of the proposed action regarding public health and safety were considered under Section 6.6 of the EA, which considers social impacts of regulations to relate to changes such as demographics, employment, fishery dependence, safety, attitudes, equity, cultural values, and the well-being of persons, families, and fishing communities. The EA additionally considers public health and human safety as part of the consistency evaluation for each of the National Standards under MSA, given that National Standard 10 requires that conservation and management measures, to the extent practicable, promote the safety of human life at sea.

As discussed in Section 6 of the EA, none of the measures in this action is expected to substantially change the manner in which participants in either fishery. There are no changes in fishing behavior anticipated to result from this action that would affect public health and/or human safety. Given this, there are no adverse effects relating to public health and/or human safety that are expected to result from the proposed action.

2) The degree of reasonably foreseeable adverse effects on unique characteristics of the geographic area such as historic or cultural resources, parks, Tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas, including:

a) Resources listed or eligible for listing in the National Register of Historic Places;

The impacts of the action on the human environment is described in section 6.6 of the EA. No adverse impacts or any significant impacts are expected to occur relating to resources listed or eligible for listing in the National Register of Historic Places. The measures in this proposed action are not expected to result in substantial changes to the spatial/and or temporal distribution of current fishing effort, or substantially alter fishing methods. Although there are shipwrecks present in the area where fishing occurs, including some registered on the National Register of Historic Places, vessels typically avoid fishing too close to wrecks due to the possible loss or entanglement of gear. This proposed action is not expected to change this behavior.

b) *Federal threatened or endangered species or their critical habitat;*

Impacts to Endangered Species Act (ESA)-listed species and critical habitat are discussed in Section 6.4 and Section 6.5 of the EA respectively. The purpose of this action is to implement management measures to reduce the bycatch of Atlantic sturgeon in the Federal gillnet fisheries for monkfish and spiny dogfish. The New York Bight, Chesapeake Bay, Carolina, and South Atlantic Distinct Population Segments (DPS) of Atlantic sturgeon are listed as endangered, and the Gulf of Maine DPS is listed as threatened under the ESA.

On May 27, 2021, the National Marine Fisheries Service (NMFS) completed formal consultation pursuant to section 7 of the ESA of 1973, as amended, and issued a Biological Opinion on the authorization of eight Federal FMPs, two interstate fishery management plans (ISFMP), and the implementation of the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment 2.¹ The 2021 Opinion considered the effects of the authorization of these FMPs, ISFMPs, and the implementation of the Omnibus EFH Amendment on ESA-listed species and designated critical habitat, and determined that those actions were not likely to jeopardize the continued existence of any ESA-listed species or destroy or adversely modify designated critical habitats of such species under our jurisdiction. An Incidental Take Statement (ITS) was issued in the 2021 Opinion. The ITS includes reasonable and prudent measures and their implementing terms and conditions, which NMFS determined are necessary or appropriate to minimize impacts of the incidental take in the fisheries assessed in the 2021 Opinion.

On January 10, 2024, NMFS issued a 7(a)(2)/7(d) memorandum that reinitiated consultation on the 2021 Opinion. The Federal actions to be addressed in the reinitiation of consultation include the authorization of the Federal fisheries conducted under the aforementioned eight Federal FMPs (see footnote 2). The reinitiated consultation will not include the American lobster and Jonah crab fisheries, which are authorized under ISFMPs.²

¹The eight Federal FMPs considered in the May 27, 2021, Biological Opinion include: (1) Atlantic Bluefish; (2) Atlantic Deep-Sea Red Crab; (3) Mackerel, Squid, and Butterfish; (4) Monkfish; (5) Northeast Multispecies; (6) Northeast Skate Complex; (7) Spiny Dogfish; and (8) Summer Flounder, Scup, and Black Sea Bass. The two ISFMPs are American Lobster and Jonah Crab.

² On December 29, 2022, President Biden signed the Consolidated Appropriations Act, 2023, which included the following provision specific to NMFS' regulation of the American lobster and Jonah crab fisheries to protect North Atlantic right whales, "Notwithstanding any other provision of law ... for the period beginning on the date of enactment of this Act and ending on December 31, 2028, the Final Rule ... shall be deemed sufficient to ensure that the continued Federal and State authorizations of the American lobster and Jonah crab fisheries are in full compliance with the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)." Given this, the American lobster and Jonah crab fisheries remain in compliance with the ESA through December 31, 2028; this determination was documented in a memorandum issued by the Greater Atlantic Regional Fisheries Office's Sustainable Fisheries Division on June 15, 2023.

Given the information provided above, it has been determined that the proposed action does not entail making any changes to the monkfish or spiny dogfish fisheries during the reinitiation period that would cause an increase in interactions with or effects to ESA-listed species or their critical habitat beyond those considered in NMFS' January 10, 2024, 7(a)(2)/7(d) reinitiation memorandum. Therefore, the proposed action is consistent with NMFS' January 10, 2024, 7(a)(2) determination.

c) *Stocks of marine mammals as defined in the Marine Mammal Protection Act;*
Impacts to protected resources, including those stocks of marine mammals as defined in the Marine Mammal Protection Act (MMPA) are discussed in section 6.4 of the EA.

Given the gear types used in the monkfish and dogfish fishery, there is the potential for interactions to occur with protected species of marine mammals. The proposed action specifically includes measures that apply to vessels fishing with gillnet gear.

Impacts stem from current levels of fishing opportunities for vessels and their fishing effort (e.g., gear quantity, soak/tow time, area fished). The preferred alternatives under the proposed action are expected to result in slight negative to slight positive impacts to non-ESA listed marine mammal species protected under the MMPA. The proposed action is not expected to alter overall fishing operations, increase fishing effort, or alter the spatial and/or temporal distribution of current fishing effort in a manner that would substantially increase interaction rates with marine mammals. Based on this, the proposed action will not change the basis for the determinations made in previous MMPA consultations. As a result, this action is not expected to adversely affect stocks of marine mammals as defined in the MMPA.

d) *Managed fisheries and fish species;*

Impacts of the proposed action on managed fisheries and fish species are discussed in Section 6.2 and Section 6.3 of the EA.

The preferred alternatives under the proposed action are not expected to alter overall fishing operations, increase fishing effort, or alter the spatial and/or temporal distribution of current fishing effort.

For both of the target species, the preferred alternatives under the proposed action will not modify the overall limits that drive target species mortality (quotas/trip limits) and as a result are not expected to modify overall catch in such a way that is likely to change the status of the target species. It is not expected that the gear modifications required under the proposed action would affect monkfish, given that the low-profile gear has been shown in prior research not to impact catch rates of monkfish. For dogfish, it is not expected, based on industry feedback, that the overnight soak measures will meaningfully alter fishing behavior beyond what is currently occurring in the fishery. The impacts of the preferred alternatives on target species are expected to be negligible to slight positive.

Impacts on non-target fish species from the preferred alternatives under the proposed action are expected to be slight negative to slight positive. The low-profile gillnet gear has been shown in prior research to not to impact catch rates of winter skate (the primary non-target species catch in the gillnet fishery for monkfish). Otherwise, neither the low-profile gillnet nor the overnight soak provisions are expected to substantially change fishing behavior, and thus fishing mortality of non-target species and the overall amount of non-target species interactions is not expected to change in a manner that affects the stock status of any species.

e) *Essential fish habitat identified under the Magnuson-Stevens Fishery Conservation and Management Act;*

Impacts to the physical environment and essential fish habitat are discussed in Section 6.5 of the EA. The proposed action is not expected to cause substantial damage to EFH as defined under the MSA and identified in the Monkfish and Spiny Dogfish FMPs. The measures in this proposed action are applicable only to vessels fishing with gillnet gear, which is considered to have minimal and temporary effects on seafloor habitats and EFH. However, fishing under these FMPs with other gear types, which can have greater impacts on seafloor habitats (e.g., otter trawl), is expected to continue, and as such, this action would not actively improve habitat by changing that fishing activity. As a result, the impacts of the preferred alternatives in this proposed action on the physical environment and EFH are expected to be negligible to slight negative.

f) *Vulnerable marine or coastal ecosystems, including, but not limited to, deep coral ecosystems;*

The preferred alternatives are not expected to have significant impacts on the natural or physical environment, including vulnerable marine or coastal ecosystems. The preferred alternatives are not expected to alter fishing methods or activities or to substantially increase fishing effort or substantially change the spatial and/or temporal distribution of current fishing effort compared to past effort. Fishing for a variety of species has taken place in the areas fished for monkfish and spiny dogfish for many years. This action limits gillnet activity in some defined geographic areas at specific times. However, as discussed in Section 6 of the EA, overall it is not expected to substantially change the locations or nature of fishing activity in either fishery. While some fishing takes place near the continental slope/shelf break where deep sea corals may be found in and around the submarine canyons, much of this area in the Mid-Atlantic is now protected by a prohibition on bottom-tending gear in the Frank R. Lautenberg Deep Sea Coral Protection Area (81 Federal Register 90246; December 14, 2016). On the outer continental shelf in New England waters, the Georges Bank Deep Sea Coral Protection Area (86 Federal Register 33553; June 25, 2021) designated coral protection areas on Georges Bank and in the Gulf of Maine and prohibited the use of certain bottom-tending gears in those areas. The preferred alternatives are not expected to alter fishing patterns relative to this protected area or in any other manner that would lead to adverse impacts on deep sea coral or other vulnerable marine or coastal ecosystems.

g) *Biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.);*

The impacts of the monkfish and spiny dogfish fisheries on biodiversity and ecosystem functioning have not been assessed; however, the impacts to components of the ecosystem (i.e., non-target species, habitat, and protected species) have been considered. As described in Section 6, the preferred alternatives are not expected to alter fishing methods or activities or to substantially increase fishing effort or the spatial and/or temporal distribution of current fishing effort compared to past effort. As described in the EA, expected levels of effort are not likely to further negatively impact the stock status of non-target species, they are not likely to cause additional habitat damage beyond that previously caused by a variety of fisheries, and they are not expected to substantially increase interaction risk with any protected species. These measures were specifically designed to support the long-term sustainability of the monkfish and spiny dogfish fisheries and to provide benefits to Atlantic sturgeon by reducing the risk of entanglement and associated mortality. They are not, however, expected to contribute to the recovery of any damaged habitats or endangered or threatened species other than Atlantic sturgeon. For these reasons, the preferred alternatives are not expected to have a substantial impact on biodiversity and ecosystem function within the affected area.

h) National marine sanctuaries, marine national monuments, or their associated resources;

There are National Marine Sanctuaries and Marine National Monuments established in the broader region covered by the monkfish and spiny dogfish fisheries and considered in the EA. However, the areas fished have been fished for many years and are unlikely to be degraded further as the result of the levels of fishing effort that are expected under the proposed action, which are not expected to be substantially different from past levels of effort. This action is generally not expected to change the typical manner or spatial extent in which fishing is conducted. As described above, no significant impacts to other VECs that may be found within these monuments or sanctuaries are expected. Fishery participants would also be required to continue to comply with any rules or regulations concerning fishing activity within these areas. As a result, the proposed action is not expected to have any substantial effects on national marine sanctuaries or monuments.

i) The possibility of contributing to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species;

There is no indication that the monkfish or spiny dogfish fisheries have ever resulted in the introduction or spread of noxious weeds or nonnative invasive species. As described in Section 6, the preferred alternatives are not expected to alter fishing methods or activities, to substantially increase fishing effort or substantially change the spatial and/or temporal distribution of current fishing effort compared to past effort. Therefore, it is highly unlikely that the proposed action would result in any effects that promote the introduction, growth, or expansion of these species.

j) Communities with environmental justice concerns (in accordance with EO 14096)

This action is not expected to have disproportionately high effects on low income or minority populations. As described in Section 6 of the EA, this action is not expected to alter the operation of, or participation in, the monkfish and spiny dogfish fisheries, and would apply

to all participants in the affected area, regardless of minority status or income level. See further discussion in section 7 of the EA.

k) The rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders.

We have identified no rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders that apply to this proposed action, and thus do not expect effects on any such right. As described in Section 6, the preferred alternatives are not expected to alter fishing methods or activities or to substantially increase fishing effort or the spatial and/or temporal distribution of current fishing effort compared to past effort.

l) Bird species protected under the Migratory Bird Treaty Act.

Information about seabird interactions with these fisheries is limited. However, there is no known evidence of substantial impacts to bird species, including those protected under the Migratory Bird Treaty Act, from the spiny dogfish or monkfish fisheries in the past. The proposed measures are not expected to result in substantial changes to the spatial and/or temporal distribution of current fishing effort, or substantially alter fishing methods. As a result, it is not expected that the action would have any new effect on these species.

3) Whether the action may violate relevant Federal, State, Tribal, or local laws or other requirements or be inconsistent with Federal, State, Tribal, or local policies designed for the protection of the environment.

This action is not expected to alter fishing methods or activities such that they violate any Federal, state, Tribal, or local law, or other requirements imposed for environmental protection. The measures were developed to be consistent with the MSA.

Section 7 of the EA describes consistency with applicable laws and Executive Orders, including the relation to the Harbor Porpoise Take Reduction Plan regulations.

4) The degree to which the potential effects on the human environment are highly uncertain or involve substantial scientific disagreement.

There is no substantial scientific disagreement about the expected effects of the action, and the effects are not expected to be highly uncertain. The measures are not expected to substantially alter fishing methods or activities, nor to substantially increase fishing effort or the spatial and/or temporal distribution of current fishing effort. The measures contained in the action are thus not expected to have highly uncertain, unique, or unknown risks on the human environment. Area-based restrictive gear measures are comparable to those implemented in other fisheries in the past (e.g., selective gear requirements in the Northeast Multispecies FMP), and are otherwise consistent with the conservation goals of the Monkfish and Spiny Dogfish FMPs. Fishing conducted under the Monkfish and Spiny Dogfish FMPs has been monitored and analyzed by both the New England and Mid-Atlantic Fishery Management Councils processes for many years (as well as the Atlantic States Marine Fisheries Commission process, in the case of the Spiny Dogfish FMP), and, thus, risks from the fishery are relatively well known.

V. Other Actions Including Connected Actions:

There are no significant cumulative effects of the proposed action, based on the information and analyses available in Section 6.7 of the EA and in past Monkfish and Spiny Dogfish FMP documents. While reasonably foreseeable future actions have been identified (e.g., Harbor Porpoise Take Reduction Team rulemaking, see sections 6.4 and 7.3 of the EA) we have determined that the combined (or similar term) effects will not be significant.

VI. Mitigation and Monitoring:

NMFS does not anticipate any high or significant impact from this action. Therefore, NMFS is not proposing or adopting any mitigation measures or monitoring plans.

DETERMINATION

Based on the Final Environmental Assessment for Framework Adjustment 15 to the Monkfish Fishery Management Plan; Framework Adjustment 6 to the Spiny Dogfish Fishery Management Plan, NMFS has determined in this Finding of No Significant Impact (FONSI) that preparation of an EIS for the Framework Adjustment 15 to the Monkfish Fishery Management Plan; Framework Adjustment 6 to the Spiny Dogfish Fishery Management Plan, is not required because the proposed action will not have significant effects. All adverse impacts of the proposed action as well as mitigation measures have been evaluated to reach this conclusion of no significant impacts.

Michael Pentony
Regional Administrator
Greater Atlantic Regional Fisheries Office
National Marine Fisheries Service

Date