

forms to certify they are in good financial standing with the government, their workplace is drug-free and they will limit their governmental lobbying activities. The specific details of these certifications will be published in the **Federal Register**.

NMFS requests comments from the public on the appropriateness of spending the appropriated monies by this proposed application and bid process, the methods to be used for ranking bids, the process for distributing funds and all aspects of this proposed FCRP.

IV. Public Information Meetings

To gain information from the public on how best to implement a fishing capacity reduction program utilizing the \$10.0 million appropriation, NMFS is planning the following public meetings, which will start at 7 p.m.:

1. May 8, 2001 - Gloucester, MA - NMFS, 1 Blackburn Drive, 978-281-9136
2. May 9, 2001 - Portland, ME - Holiday Inn By the Bay, 88 Spring Street, 207-775-2311
3. May 10, 2001 - Plymouth, MA - John Carver Inn, 25 Summer Street, 508-746-7100
4. May 10, 2001 - Ellsworth, ME - White Birches Motel, U.S. Route 1, 207-667-3621
5. May 15, 2001 - Portsmouth NH - Comfort Inn, Route 1, 603-433-3338
6. May 15, 2001 - Riverhead, NY - Ramada Inn East, 1830 Route 25, 631-369-2200
7. May 16, 2001 - New Bedford, MA - New Bedford Inn, 500 Hathaway Road, 508-997-1231
8. May 17, 2001 - Toms River, NJ - Holiday Inn, 290 Route 37E, 732-244-4000
9. May 17, 2001 - Narragansett, RI - URI Coastal Institute, Graduate School of Oceanography, Corliss Auditorium, South Ferry Road, 401-874-6110

Additional meetings may be requested by the public and will be announced in the **Federal Register** as they are scheduled.

Authority: 16 U.S.C. 4107

Dated: March 27, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01-8048 Filed 4-2-01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010319075-1075-01; I.D. 011101A]

RIN 0648-AF87

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish Fishery; Tilefish Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Fishery Management Plan for Tilefish (FMP). The FMP was developed by the Mid-Atlantic Fishery Management Council (Council) and would initiate management of golden tilefish (*Lopholatilus chamaeleonticeps*) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The management unit is defined as all golden tilefish in the exclusive economic zone (EEZ) from Maine to the Virginia/North Carolina border. The intended effect of this proposed rule is to stop overfishing and to rebuild the tilefish stock in the Northwest Atlantic Ocean.

DATES: Comments must be received on or before May 18, 2001.

ADDRESSES: Comments on this proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope: "Comments on Tilefish Plan Proposed Regulations." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

Comments on the collection-of-information requirements that would be established by this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer) and to the Regional Administrator, NMFS, Northeast Region (see previous address).

Copies of the FMP, its Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), and the

Final Environmental Impact Statement (FEIS) are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT:

Myles Raizin, Fishery Policy Analyst, 978-281-9104, e-mail at Myles.A.Raizin@noaa.gov, fax at (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

Results of the NMFS 1998 stock assessment of tilefish indicate that the tilefish stock is at a low biomass (B) level and is overexploited. Total biomass in 1998 was estimated to be 6.8 million lb (3.1 million kg), which is approximately 35 percent of the biomass that would produce maximum sustainable yield (MSY) or B_{MSY} . The biomass-based fishing mortality rate (F) in 1998 was estimated to be 0.45, which is about double the F that would produce MSY or F_{MSY} where $F_{MSY} = 0.22$. Total landings of tilefish in 1998 were 2.7 million lb (1.2 million kg), which is significantly less than the estimated MSY of 4.2 million lb (1.9 million kg). Total landings of tilefish in 1999 decreased to 1.2 million lb (0.544 million kg).

To meet the requirements of the Magnuson-Stevens Act, the FMP would establish the following: An overfishing definition; a stock rebuilding strategy; a limited entry program; a commercial quota; permit and reporting requirements for commercial vessels, operators, and dealers; a Tilefish Monitoring Committee; a framework adjustment process; and identification and designation of tilefish essential fish habitat (EFH). A notice of availability of the FMP was published at 66 FR 9814, February 12, 2001, with a 60-day comment period ending on April 13, 2001.

Overfishing Definition

The Magnuson-Stevens Act requires that each fishery management plan specify objective and measurable status determination criteria for identifying when stocks or stock complexes are overfished. The Council would establish status determination criteria based on a maximum F threshold and a minimum B threshold. The maximum F threshold would be specified as F_{MSY} , and the minimum B threshold would be specified as $\frac{1}{2} B_{MSY}$. The Magnuson-Stevens Act national standard guidelines suggest that risk-averse fishing mortality and biomass targets be specified. For tilefish, the Council

adopted a target fishing mortality rate (F_{target}) equal to the annual F determined from the rebuilding schedule in the FMP. The Council chose a target stock B (B_{target}) equal to B_{MSY} ($B_{\text{target}} = 18.6$ million lb (8,448 mt)).

Stock Rebuilding Schedule

The Council proposes a rebuilding schedule of 10 years, with measures designed to provide a 50-percent probability of attaining B_{MSY} at the end of the 10-year period. Total allowable landings (TAL) for each of the next 10 fishing years would be set at 1.995 million lb (905,172 kg). The rebuilding schedule would reduce F from its 1998 level of 0.45, to 0.29 in the first year, and gradually down to $F = 0.11$ in the tenth year.

Commercial Vessel Permitting

Limited Entry Categories

The Council identified two groups as having participated in the directed bottom longline fishery for tilefish. One group is composed of primarily New Jersey and Rhode Island vessels that fished for tilefish in the 1970s and 1980s. The other group is composed of a small number of present participants homeported in Montauk, NY. The majority of the New Jersey longline vessels left the fishery in the mid- to late-1980s to fish, for the most part, on swordfish, which was considered a more profitable fishery.

The Council proposes a two-tier full-time category and a part-time category. To qualify for the full-time tier 1 category, a vessel must have landed at least 250,000 lb (113,430 kg) per year for 3 years between 1993 and 1998. To qualify for the full-time tier 2 category, a vessel must have landed at least 30,000 lb (13,612 kg) of tilefish per year for 3 years between 1993 and 1998. To be in the part-time category, a vessel must have landed 10,000 lb (4,537 kg) or more of tilefish in at least 1 year between 1988 and 1993, and 10,000 lb (4,537 kg) or more in at least 1 year between 1994 and 1998, or 28,000 lb (12,704 kg) or more of tilefish in at least 1 year between 1984 and 1993. Data indicate that 4 vessels would qualify for each of the two full-time tiers, and 44 would qualify for the part-time category. Because tier 1 full-time vessels must meet a higher threshold for historical landings, tier 1 vessels would be allocated a larger share of full-time quota than tier 2 vessels. The 4 vessels that would qualify for tier 1 are all homeported in Montauk, NY. A trigger in the FMP would require the Council to amend the limited entry program, which utilizes 1984-98 data, once the

stock has been rebuilt to B_{MSY} , to allow the entry of vessels that were historical participants in the fishery.

The Council also proposes to restrict entrants into the limited access fishery to those vessels that fish with longline gear only. This provision was included because data indicate that otter trawls, for the most part, have not directed their fishing efforts on tilefish. The Council also noted that bottom-tending mobile gear could potentially have a detrimental impact on tilefish habitat.

Vessel owners or operators would not be allowed to obtain a tilefish limited access permit for more than one limited access category. In addition, vessel owners or operators who would be issued a limited access permit would not qualify for an incidental catch permit. This provision would prevent limited access vessels from harvesting tilefish once the annual quota for their permit category is attained.

Incidental Catch Category

The Incidental Catch Permit would be an open access permit. A trip limit of 300 lb (138 kg) would be implemented for vessels in this category. Vessels with incidental catch permits would not be restricted to longline gear only.

Commercial Quota Allocation

The quota would be divided among the three limited access categories after 5 percent of the TAL is deducted to reflect landings by vessels issued incidental catch permits. After adjusting for the incidental catch, the remaining TAL would be allocated as follows: Full-time tier 1 category, 66 percent; full-time tier 2 category, 15 percent; and part-time category, 19 percent. If the Administrator, Northeast Region, NMFS (Regional Administrator) determines that the quota for a certain limited access category is expected to be exceeded, the Regional Administrator would close the EEZ to fishing for tilefish by those vessels in that category for the remainder of the fishing year. NMFS would publish a notification of the closure in the **Federal Register**. Any overages that occur in the quota for any limited access category in a given fishing year would be subtracted from the quota for that category in the following fishing year. If incidental catch exceeds 5 percent of the TAL for a given fishing year, the trip limit of 300 lb (138 kg) may be reduced in the following year.

Vessel Operator Permit

Any individual who operates a vessel for the purpose of fishing commercially for tilefish would be required to obtain an operator's permit. Any vessel fishing

commercially for tilefish would be required to have on board at least one operator who holds an operator's permit, who would be held accountable for any violations of the fishing regulations by that vessel and those aboard, and who would be subject to a permit sanction for such violations. During the permit sanction period, the individual operator could not work in any capacity aboard a federally permitted fishing vessel. An individual who already holds an operator's permit for another federally managed fishery would not need to apply for another operator permit, since NMFS issues only one operator permit for all federally managed fisheries.

Dealer Permit

Any dealer of tilefish would be required to have a Federal dealer's permit. A dealer of tilefish is defined as a person or firm that receives tilefish harvested in or from the EEZ for a commercial purpose other than transport.

Reporting Requirements for Commercial Vessels and Dealers

Vessel owners with permits issued pursuant to the FMP would be required to submit vessel logbooks within 15 days of the end of the reporting month, in order for NMFS to monitor the fishery. The logbook would require vessels to report everything caught, including bycatch, and would be the same as the logbooks required under other Federal fishery management plans. Owners and operators of vessels issued a limited access permit would be required to report landings under an interactive voice response (IVR) reporting system for vessels.

Dealers with permits issued pursuant to the FMP would be required to submit weekly reports that would include the quantity of tilefish purchased (in pounds) and the name and permit number of the individuals from whom the tilefish was purchased, among other information. Buyers that do not purchase tilefish directly from vessels would not be required to submit reports under this provision. Processors would be required to submit the Annual NMFS Processed Product Report.

Annual Specification Process

The Tilefish Monitoring Committee established under the FMP would be a joint committee made up of representatives of the Council staff, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, the states (Maine to Virginia), and the fishing industry. State representatives could include any

individuals designated by their respective states. There would be a maximum of three state representatives, with the New England states having one and the Mid-Atlantic states having up to two. There would also be a non-voting industry advisor who would be appointed by the Council Chairman. The Council's Executive Director or his designee would chair the Committee. The Tilefish Monitoring Committee would review annually the best available data and make recommendations to the Tilefish Committee regarding the specification of quotas and management measures to implement those quotas for the upcoming year. The Council would consider the report of the Tilefish Committee, as well as public input, in determining the quota recommendation for the next fishing year. Upon receiving a quota recommendation from the Council, NMFS would publish a proposed rule in the **Federal Register** soliciting public comment on the Council's recommendations. NMFS, after receiving public comment, could specify quotas other than those recommended by the Council, provided that the quotas are consistent with the objectives of the FMP and that the reason for the change in the Council's recommended quota is clearly stated.

Framework Adjustment Process

In addition to the annual specification adjustment, the Council could add or modify management measures through a framework adjustment process at any time during the year. This adjustment procedure would allow the Council to add or modify management measures through a streamlined public review process. The following specific management measures could be implemented or adjusted at any time through the framework process: (1) Minimum fish size, (2) minimum hook size, (3) closed seasons, (4) closed areas, (5) gear restrictions or prohibitions, (6) permitting restrictions, (7) gear limits, (8) trip limits, (9) overfishing definition and related thresholds and targets, (10) annual specification quota setting process, (11) FMP Monitoring Committee composition and process, (12) description and identification of EFH, (13) fishing gear management measures that affect EFH, (14) habitat areas of particular concern, and (15) set-aside quotas for scientific research.

The adjustment procedure would involve the following steps. If the Council determines that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, it would recommend, develop, and analyze appropriate management

actions over the span of at least two Council meetings. The Council would provide the public with advance notice of the availability of the recommendation, the appropriate justifications and economic and biological analyses, and an opportunity to comment on the proposed adjustments before and during the second Council meeting on that framework action. After developing management actions and receiving public comment, the Council would submit the recommendation to the Regional Administrator. The recommendation would include supporting rationale, an analysis of impacts, and a recommendation on whether to publish the management measures as a final rule. If, after reviewing the Council's recommendation and supporting information, the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule, the action would be published in the **Federal Register** as a final rule. If the Regional Administrator concurs with the Council's recommendation, but determines that the recommended measures should be published first as a proposed rule to obtain additional public comment, the action will be published as a proposed rule in the **Federal Register**. If, after additional public comment, the Regional Administrator concurs with the Council's recommendation, the action will be published as a final rule in the **Federal Register**. If the Regional Administrator does not concur with the Council's recommendation, the Council will be notified, in writing, of the reason for non-concurrence.

Identification and Description of Tilefish EFH

Tilefish EFH would be defined as the water column and substrate between the 250 and 1,200 ft (105 to 366 m) isobath, from the U.S./Canadian boundary to the Virginia/North Carolina boundary. Additionally, the area included as EFH in NMFS statistical areas 537 and 616, as defined at section 2.2.2.2.1 and shown in Figures 4 and 5 of the FMP, would be identified as Habitat Areas of Particular Concern (HAPC), since greater than 90 percent of the recent tilefish landings come from these areas.

Other Measures

The Regional Administrator would be authorized to place sea samplers (observers) aboard vessels if it is determined that a voluntary sea

sampling system is not producing a representative sample from the tilefish fishery. Fishing vessels would be encouraged to leave an area following an interaction with an endangered species in order to minimize the probability of additional encounters.

The Regional Administrator, in consultation with the Council Executive Director, could exempt any person or vessel from the requirements of the FMP in order to conduct experimental fishing beneficial to the management of the tilefish resource or fishery. The Regional Administrator could not grant such an exemption unless it is determined that the purpose, design, and administration of the exemption are consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law. The exemption could not have a detrimental effect on the tilefish resource or fishery, cause any quota to be exceeded, or create significant enforcement problems.

Classification

At this time, NMFS has not determined that the FMP that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of this analysis follows:

A description of the reasons why action by the agency is being considered and the objectives and legal basis of the proposed rule are explained in the preamble to this rule and in the IRFA and are not repeated here. All of the affected businesses (fishing vessels and dealers) qualify as small entities under the standards described in NMFS guidelines.

Economic Impacts on Dealers and Processors

In 1998, 83 Federal seafood dealers handled tilefish. Seventy-three of these derived less than 5 percent of their revenues from tilefish, and only 5 depended on tilefish for more than 20 percent of their revenues; one of them, however, derived 100 percent of his revenues from tilefish. In terms of value, 21 dealers reported annual revenue from tilefish of over \$10,000, 7 reported revenue over \$50,000, and 1 reported revenue of between 1 and 5 million dollars.

Fewer than three processors reported processing tilefish for the Northeast and

South Atlantic combined in the 1998 NMFS Processed Products Survey. As such, all data for these processors are confidential. All the firms reporting were small entities, and tilefish constitute a very small percentage of their total volume and value.

Economic Impacts on Vessels

In 1998, 215 different vessels landed tilefish along the Atlantic coast. Under the FMP, any vessel fishing commercially for tilefish would have to obtain a Federal vessel tilefish permit. Based on 1998 data, the percentage of the limited access, incidental, and total vessels that would incur revenue losses of 5 percent or greater under the proposed rule was 10.0 percent, 2.5 percent, and 4.0 percent, respectively. However, an analysis of vessels that would qualify for limited access under the proposed rule reveals that 100 percent of the full-time tier 1 category vessels, 25 percent of the full-time tier 2 category vessels, and none of the part-time category vessels would incur revenue reductions of 5 percent or greater. One vessel that would not qualify for the limited access program but could obtain an incidental category permit is projected to incur revenue losses of 50 percent or greater. This vessel had substantial landings of tilefish in 1998 and very few landings of other species. Since this vessel would be in the incidental category, it would be limited to landing 300 lb (138 kg) of tilefish per trip.

Economic Impacts Resulting From Reporting and Recordkeeping Requirements

It is estimated that, in 1998, 215 different vessels landed tilefish along the Atlantic coast. Under the proposed rule, any vessel fishing commercially for tilefish would be required to obtain a Federal vessel tilefish permit. Based on the period of January 1, 1988, to June 15, 1993, 312 vessels landed at least 1 lb (2.20 kg) of tilefish. Assuming that all these vessels would be eligible for a tilefish permit and that they would all apply, there would be 312 new permit applications as a result of this proposed rule. Total initial costs for vessel permits would be \$106 for public burden (\$0.34 per vessel x 312 vessels). For dealer permits, there would be a total cost of \$3 (\$0.34 per vessel x 10). It is estimated that 85 of the vessels that would apply for initial vessel permits do not presently possess a Northeast fisheries permit; therefore, for operator permits, there would be a total cost of \$29 (\$0.34 per operator x 85 vessels) and \$850 (\$10.00 per vessel x 85 vessels) for obtaining and displaying vessel identification numbers. About 5

percent of the vessels (5 vessels) applying for the initial vessel permit may also incur additional costs associated with confirmation of permit history, replacement and upgrades, and permit vessel appeals, which are estimated to total \$6 (\$0.34 per vessel x 5 vessels x 3 responses). Eighty-five vessels currently do not report under the system in place for Northeast permit holders; therefore, total costs of submitting vessel logbooks would be \$419 annually (\$4.93 per vessel x 85 vessels). Total costs of submitting dealer reports would be \$177 (\$17.70 per dealer x 10 dealers).

There are no large businesses involved in the industry; therefore, there are no disproportionate effects on small entities. There are no disproportionate costs of compliance among the affected small entities. The proposed action does not create regulations that duplicate, overlap, or conflict with any state regulation or other Federal law.

A copy of this analysis is available from the Council (see **ADDRESSES**).

The Council prepared a final environmental impact statement (FEIS) for this FMP. The FEIS was filed with the Environmental Protection Agency (EPA) March 28, 2001. The EPA will publish a notice of availability of the FEIS in the **Federal Register**. A copy of the FEIS may be obtained from the Council (see **ADDRESSES**).

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to review and approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will also subject persons to requirements not contained in the rule itself. For example, persons required to obtain vessel permits under this rule will automatically be subject to logbook reporting requirements. Both types of requirements have been submitted to OMB for approval.

Public reporting burden for the collections of information contained in this rule are as follows: 1 hour for a vessel operator permit application, 30 minutes for a new vessel permit application, 15 minutes for a vessel permit renewal application, 3 hours for a vessel permit appeal, 3 hours for a

vessel confirmation of permit history application, 4 minutes per vessel report using the IVR system, 4 minutes per dealer report using the IVR system, 3 hours for a vessel replacement or upgrade application, and 5 minutes for a dealer permit application. Reporting burden for the information requirements that are proposed in the FMP and are not contained in this rule, but will be imposed as a consequence of the rule, is estimated to be: 5 minutes per response for a vessel logbook, 2 minutes per dealer report using NOAA Form 88-30, 45 minutes for vessel identification, and 30 minutes for completing the Processed Products Report. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and Recordkeeping Requirements.

Dated: March 28, 2001.

Clarence Pautzke

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the

Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies fishery (Multispecies FMP); the monkfish fishery (Monkfish FMP); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic herring fishery (Atlantic Herring FMP); and the tilefish fishery (Tilefish FMP). * * *

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3. In § 648.2, the definition for "Council" is revised and a new definition for "Tilefish FMP Monitoring Committee" is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, monkfish, and NE multispecies fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; Atlantic surf clam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

* * * * *

Tilefish FMP Monitoring Committee means a committee made up of staff representatives of the MAFMC, the NMFS Northeast Regional Office, the Northeast Fisheries Science Center, up to three state representatives (the New England states having one representative and the Mid-Atlantic states having a maximum of two representatives) and one non-voting industry member. The MAFMC Executive Director or his designee chairs the committee.

* * * * *

4. In § 648.4, paragraph (a)(12) is added and paragraph (b) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(12) *Tilefish vessels.* Any vessel of the United States must have been issued and carry on board a valid tilefish vessel permit to fish for, possesses, or land tilefish in or from the EEZ.

(i) *Limited access tilefish permits—(A) Eligibility.* A vessel may be issued a limited access tilefish permit if it meets

any of the following limited access tilefish permit criteria:

(1) *Full-time tier 1 category.* The vessel landed at least 250,000 lb (113,430 kg) of tilefish per year for any 3 years between 1993 and 1998, at least 1 lb (2.20 kg) of which was landed prior to June 15, 1993.

(2) *Full-time tier 2 category.* The vessel landed at least 30,000 lb (13,612 kg) per year for any of 3 years between 1993 and 1998, at least 1 lb (2.20 kg) of which was landed prior to June 15, 1993.

(3) *Part-time category.* The vessel landed 10,000 lb (4,537 kg) of tilefish in any 1 year between 1988 and 1993 and 10,000 lb (4,537 kg) in any 1 year between 1994 and 1998, or landed 28,000 lb (12,904 kg) of tilefish in any 1 year between 1984 and 1993.

(ii) *Limited access permit restrictions—(A) Categories—(1) A vessel may be issued a limited access tilefish permit for only one category during a fishing year.*

(2) A vessel issued a limited access permit may not be issued an incidental catch permit during a fishing year.

(B) *Application/renewal restriction—(1) Initial application.* A vessel owner must apply for an initial limited access tilefish permit before [date 365 days from date of publication of the final rule].

(2) For fishing years beyond the initial application year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

(C) *Qualification restrictions.* The provisions of paragraph (a)(1)(i)(C) of this section apply.

(D) *Change in ownership.* The provisions of paragraph (a)(1)(i)(D) of this section apply.

(E) *Replacement vessels.* The provisions of paragraph (a)(1)(i)(E) of this section apply.

(F) *Upgraded vessel.* The provisions of paragraph (a)(1)(i)(F) of this section apply.

(G) *Consolidation restriction.* The provisions of paragraph (a)(1)(i)(G) of this section apply.

(H) *Vessel baseline specifications.* The provisions of paragraph (a)(1)(i)(H) of this section apply.

(I) [Reserved]

(J) *Confirmation of permit history.* The provisions of paragraph (a)(1)(i)(J) of this section apply.

(K) *Abandonment or voluntary relinquishment of permits.* The provisions of paragraph (a)(1)(i)(K) of this section apply.

(L) *Restriction on permit splitting.* The provisions of paragraph (a)(1)(i)(L) of this section apply.

(M) *Appeal of denial of a permit.* (1) Any applicant denied a tilefish limited

access permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraphs (a)(12)(i)(A)(1),(2), or (3) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator was made in error.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation to the Regional Administrator. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(3) *Status of vessels pending appeal.*

(i) A vessel denied a limited access tilefish permit may fish, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish. The Regional Administrator will issue such a letter for the pendency of any appeal. The decision on the appeal is the final administrative action of the Department of Commerce. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter shall become invalid 5 days after receipt of the notice of denial.

(ii) *Tilefish incidental catch permit.* Any vessel of the United States that fishes for, possesses, or lands tilefish in or from the EEZ that has not been issued a limited access tilefish permit must have been issued and carry onboard a valid tilefish incidental catch permit for which there are no eligibility criteria. Such vessel is subject to the restrictions in § 648.252.

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree, as a condition of the permit, that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ; and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ,

any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium or a spiny dogfish, or bluefish commercial vessel permit must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coastwide allocation, is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of the tilefish limited access permit must agree not to land tilefish after NMFS has published a notification in the **Federal Register** stating that the quota for the tilefish limited access category under which a vessel is fishing, has been harvested. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters. If the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3' N. lat., any vessel owners who hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their moratorium black sea bass permit by certified mail addressed to the Regional Administrator and fish pursuant to their snapper-grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3' N. lat. A

moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

* * * * *

5. In § 648.5, the first sentence in paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, or tilefish harvested in or from the EEZ, or issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. * * *

* * * * *

6. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* (1) All dealers of NE multispecies, monkfish, Atlantic herring, Atlantic sea scallop, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

(2) [Reserved]

* * * * *

7. In 648.7, paragraph (a)(2)(i) is revised and paragraph (b)(1)(iv) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(2) *Weekly IVR system reports.* (i) Federally permitted dealers, other than Atlantic herring and tilefish dealers, purchasing quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section must submit, within the time period specified in paragraph (f) of this section, the following information, and any other information required by the Regional Administrator, to the Regional Administrator or to an official designee, via the IVR system established by the Regional Administrator: Dealer permit number; dealer code; pounds purchased, by species, other than Atlantic herring; reporting week in which species were purchased; and state of landing for each species purchased. If no purchases of quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section were made during the week, a report so stating must be submitted through the IVR system in accordance with paragraph (f) of this section.

(b) * * *

(1) * * *

(iv) The owner or operator of a vessel described here must report landings of tilefish each week to an IVR system. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, reporting week in which species are caught, and pounds landed. Weekly tilefish landings must be submitted via the IVR system by midnight, Eastern time, each Tuesday for the previous week. This report does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

(A) An owner or operator of any vessel issued a limited access permit for tilefish must submit a tilefish landings report via the IVR system for that week as required by the Regional Administrator.

(B) [Reserved]

* * * * *

8. In § 648.11, the first sentence of paragraph (a) and paragraph (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish; or a moratorium permit for summer

flounder; to carry a NMFS-approved sea sampler/observer.* * *

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or other specimens taken by the vessel.

* * * * *

9. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General Provisions), B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (bluefish), K (Atlantic herring), L (spiny dogfish), and M (tilefish) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

* * * * *

10. In § 648.14, paragraphs (x)(11) and (cc) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(x) * * *

(11) *Tilefish*. All tilefish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such tilefish were harvested by a vessel fishing exclusively in state waters.

* * * * *

(cc) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fish for, possess, retain or land tilefish, unless:

(i) The tilefish are being fished for or were harvested in or from the EEZ by a vessel holding a valid tilefish permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel; or

(ii) The tilefish were harvested by a vessel not issued a tilefish permit that was fishing exclusively in state waters; or

(iii) The tilefish were harvested in or from the EEZ by a vessel engaged in recreational fishing.

(2) Operate, or act as an operator of, a vessel with a tilefish permit, or a vessel fishing for or possessing tilefish in or from the EEZ, unless the operator has been issued, and is in possession of, a valid operator permit.

(3) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a dealer, or in the capacity of a dealer, tilefish that were harvested in or from the EEZ, without having been issued, and in possession of, a valid tilefish dealer permit.

(4) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a processor, or in the capacity of a processor, tilefish from a fishing vessel with a tilefish permit or from a dealer with a tilefish dealer permit, without having been issued, and in possession of, a valid tilefish processor permit.

(5) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, any tilefish, unless the vessel has been issued a tilefish permit, or unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in state waters.

(6) Purchase, possess, or receive, for a commercial purpose, or attempt to purchase, possess or receive, for a commercial purpose, tilefish caught by a vessel without a tilefish permit, unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in state waters.

(7) Fish for tilefish, with any gear other than longline, while in possession of a limited access permit.

(8) Possess tilefish harvested in or from the EEZ in excess of the trip limit, pursuant to § 648.252, unless issued a limited access permit.

(9) Land tilefish harvested in or from the EEZ for sale after the effective date of the notification in the **Federal Register**, pursuant to § 648.251, which notifies permit holders in a limited access category that the quota for that category is no longer available.

* * * * *

11. In 50 CFR part 648, Subpart M is added to read as follows:

Subpart M—Management Measures for the Tilefish Fishery

Sec.

§ 648.250 Catch quotas and other restrictions.

§ 648.251 Closures.

§ 648.252 Tilefish trip limits.

§ 648.253 Framework specifications.

§ 648.254 Gear restrictions.

Subpart M—Management Measures for the Tilefish Fishery

§ 648.250 Catch quotas and other restrictions.

The fishing year is the 12-month period beginning with [day and month of the effective date of the final rule implementing the FMP].

(a) *Total allowable landings (TAL)*. The TAL for each fishing year will be 1.995 million lb (905,172 kg) unless modified pursuant to paragraph (d) of this section.

(b) *Allocation by category*. For each fishing year, the TAL will first be reduced by 5 percent to adjust for the incidental catch. The remaining 95 percent of the TAL will be allocated as follows: Full-time tier category 1, 66 percent; Full-time tier category 2, 15 percent; and Part-time, 19 percent.

(c) *Adjustments to the quota*. Any overages that occur in the quota for any limited access category in a given fishing year will be subtracted from the quota for that category in the following fishing year. If incidental harvest exceeds 5 percent of the TAL for a given fishing year, the trip limit of 300 lb (138 kg) for the incidental category may be reduced in the following year. If an adjustment is required, a notification of adjustment of the quota will be published in the **Federal Register**.

(d) *Annual specification process*. The Tilefish FMP Monitoring Committee (Monitoring Committee) will meet after the completion of each stock assessment or at the request of the Council Chairman. The Monitoring Committee shall review tilefish landings information and any other relevant available data to determine if the annual quota requires modification to respond to any changes to the stock's biological reference points or to ensure that the rebuilding schedule is maintained. The Monitoring Committee will consider whether any additional management measures or revisions to existing measures are necessary to ensure that the TAL will not be exceeded. Based on that review, the Monitoring Committee will provide a recommendation to the Tilefish Committee of the Council.

Based on these recommendations and any public comment received, the Tilefish Committee shall recommend to the Council the appropriate quota and management measures for the next fishing year. The Council shall review these recommendations and any public comments received, and recommend to the Regional Administrator, at least 120 days prior to the beginning of the fishing year, the appropriate TAL for the next fishing year and any management measures to assure that the TAL will not be exceeded. The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations, and after such review, NMFS will publish a proposed rule in the **Federal Register** specifying the annual TAL. After considering public comments, NMFS will publish a final rule in the **Federal Register** to implement a TAL and any other measures. The previous year's specifications will remain effective unless revised through the specification process. NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

§ 648.251 Closures.

(a) *EEZ closure.* If the Regional Administrator determines that the quota for a certain limited access category will be exceeded, the Regional Administrator will close the EEZ to fishing for tilefish by those vessels in that category for the remainder of the fishing year and publish notification in the **Federal Register**.

(b) [Reserved]

§ 648.252 Tilefish trip limits.

Any U.S. fishing vessel fishing under a tilefish incidental catch category permit is prohibited from possessing more than 300 lb (138 kg) of tilefish per trip.

§ 648.253 Framework specifications.

(a) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Tilefish FMP. The following specific management measures may be implemented or adjusted at any time through the framework process:

- (1) Minimum fish size,
- (2) Minimum hook size,
- (3) Closed seasons,
- (4) Closed areas,
- (5) Gear restrictions or prohibitions,
- (6) Germitting restrictions,
- (7) Gear limits,
- (8) Trip limits,
- (9) Overfishing definition and related thresholds and targets,
- (10) Annual specification quota setting process,
- (11) Tilefish FMP Monitoring Committee composition and process,
- (12) Description and identification of EFH,
- (13) Fishing gear management measures that impact EFH,
- (14) Habitat areas of particular concern, and
- (15) Set-aside quotas for scientific research.

(1) *Adjustment process.* If the Council determines that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, it will recommend, develop, and analyze appropriate management actions over the span of at least two Council meetings. The Council will provide the public with advance notice of the availability of the recommendation, appropriate justifications and economic and biological analyses, and opportunity to comment on the proposed adjustments prior to and at the second Council meeting on that framework action. After developing management actions and receiving public comment, the Council will submit the recommendation to the Regional Administrator; the recommendation must include supporting rationale, an analysis of impacts, and a recommendation on whether to publish the management measures as a final rule.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council will make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Regional Administrator action.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur with the Council's recommendation, the Council will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

§ 648.254 Gear restrictions.

A vessel issued a limited access tilefish permit issued under § 648.4(a)(12)(i) cannot fish for tilefish with any gear other than longline.

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