

do not find the concept of early compliance with an updated list to be without merit.<sup>6</sup> Moreover, flexibility in setting a period in which manufacturers may use either of two lists would enable NHTSA to better manage the resources of its enforcement program. Given the spectrum of potential reasons the appendix might be changed, we do not agree on the appropriateness of standardizing a set lead time period of five years for all future updates of the appendix.

In reviewing the petition, we have noted that the agency's views concerning the appropriate lead time for Appendix A amendments have changed over the years. Originally, at the time of the Advanced Air Bag rule the agency had generally envisioned providing only a one-year lead time for amendments to the appendix (66 FR at 65390). A short time later, in recognition that vehicle manufacturers need to know what CRSs are included in the appendix as they design new model vehicles, NHTSA said that any changes to Appendix A will be effective for the next model year introduced one year after publication of the final rule modifying the appendix (68 FR at 65188). More recently, based in part on more experience with the capabilities of advanced air bag sensing systems recognizing CRSs in the field, in the November 2008 final rule the agency adopted a lead time schedule that allowed extra flexibility for completing certification, permitting a phase-in to assist in the transition from the CRSs in Appendix A to those in Appendix A-1. In doing so, the agency exercised its ability and willingness to achieve a balance between keeping advanced air bag sensing systems current and lessening the certification testing burdens on the vehicle manufacturers.

In future rulemakings on the appendix, we intend to continue the approach taken in the November 2008 final rule that established an implementation date for the new edition of Appendix A (A-1) based on the unique circumstances of the particular rulemaking. We believe that there no longer is a need to have a set one-year lead time for any amendment to the appendix; we believe, moreover, that a determination of lead time is best made within the context of the rulemaking that would amend the appendix, taking into account the circumstances involved

in the particular rulemaking action. While a lead time of five years may be too long for an Appendix A rulemaking in the future, a lead time of just one year may be inappropriate under the circumstances surrounding the rulemaking. In addition, we will also consider the need for the allowance of early and/or phased compliance with a new list against the burden to the agency of maintaining two lists. The agency will address the lead time and early/phased compliance needs and concerns for future Appendix A amendments on a rulemaking-by-rulemaking basis, within the notice and comment rulemaking forum appropriate for making those decisions.

#### IV. Conclusion

NHTSA will continue its process of reviewing the appendix annually to minimize problems with CRS availability and to identify emerging trends in CRS design characteristics. Although NHTSA will review Appendix A annually, we will not necessarily amend Appendix A annually. We will make the determination of whether to engage in rulemaking by considering information such as the factors discussed in the 2003 final rule, including emerging design trends or safety issues that may arise. To the extent that the Alliance requested that the agency commit to a 3-year timeframe for amending Appendix A, we are denying that request. NHTSA is also denying the Alliance's request to allow certification to any version of Appendix A for a fixed five-year time period after a new edition of Appendix A becomes effective. We believe that the agency should maintain its ability to make the determination of lead time in the context of the Appendix A rulemaking proceedings.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Accordingly, the petition is denied.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: April 28, 2009.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. E9-10098 Filed 5-1-09; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

RIN 0648-AS25

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish; Amendment 1

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

**ACTION:** Notice of availability of a fishery management plan amendment; request for comments.

**SUMMARY:** NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 1 to the Tilefish Fishery Management Plan (FMP) (Amendment 1), incorporating the Final Environmental Impact Statement (FEIS) and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce. NMFS is requesting comments from the public on Amendment 1. The proposed measures in Amendment 1 would address issues and problems that have been identified since the FMP was first implemented. These measures are considered a means to achieve the management objectives of the FMP, and include measures to implement an IFQ program.

**DATES:** Comments must be received on or before July 6, 2009.

**ADDRESSES:** An FEIS was prepared for Amendment 1 that describes the proposed action and its alternatives and provides a thorough analysis of the impacts of proposed measures and their alternatives. Copies of Amendment 1, including the FEIS and the IRFA, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. You may submit comments, identified by 0648-AS25, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Fax: (978) 281-9135, Attn: Timothy Cardiasmenos.

- Mail: Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the

<sup>6</sup> Early compliance is permitted in the November 2008 Final Rule with an effective date of January 12, 2009. Furthermore, during the production year beginning September 1, 2009, a manufacturer may certify any percentage above 50 percent of their production to Appendix A-1 and the remainder to Appendix A.

envelope, "Comments on Tilefish Amendment 1."

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Timothy Cardiasmenos, Fishery Policy Analyst, phone 978-281-9204, fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

In March 2004, the Council began the development of Amendment 1 to the FMP to evaluate alternatives for a limited access privilege program and other measures for limited access vessels. The Council held 17 public meetings on Amendment 1 between March 2004 and April 2008. After considering a wide range of issues, alternatives, and public input, the Council submitted a draft environmental impact statement (DEIS) for Amendment 1 to NMFS. The notice of availability for the DEIS published in the **Federal Register** on December 28, 2007 (72 FR 73798). Following the public comment period on the DEIS that ended on February 11, 2008, the

Council adopted Amendment 1 on April 10, 2008. Amendment 1 was developed and adopted by the Council in response to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law. Amendment 1 management measures were developed by the Council and would: (1) Implement an Individual Fishing Quota (IFQ) program; (2) establish IFQ transferability of ownership; (3) establish a cap on the acquisition of IFQ allocation (temporary and permanent); (4) address fees and cost recovery; (5) establish flexibility to revise/adjust the IFQ program; (6) establish IFQ reporting requirements; (7) modify the Interactive Voice Response (IVR) reporting requirements; (8) implement recreational permits and reporting requirements; (9) improve monitoring of tilefish commercial landings; (10) expand the list of management measures that can be adjusted via the framework adjustment process; (11) modify the Essential Fish Habitat (EFH) designation; (12) modify the habitat areas of particular concern (HAPC) designation; and (13) implement measures to reduce gear impacts on EFH within the Exclusive Economic Zone. The proposed IFQ program measures are intended to reduce overcapacity in the commercial fishery, and to eliminate, to the extent possible, problems associated with a derby-style fishery. Amendment 1 also would create a tilefish open access Charter/Party permit, which would require reporting by the recreational component of the fishery. When the original FMP was instituted in 2001, the recreational component of the fishery was believed to be small. However,

anecdotal evidence suggests that in recent years the recreational component of the fishery may have grown. The tilefish open access Charter/Party permit would provide NMFS with the ability to collect landings information on this component of the fishery in order to properly assess the health of the stock.

Public comments are being solicited on Amendment 1, and its incorporated documents, through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 1 will also be published in the **Federal Register** for public comment. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of Amendment 1 to be considered in the approval/disapproval decision on the amendment. All comments received by July 6, 2009, whether specifically directed to Amendment 1, or to the proposed rule for Amendment 1, will be considered in the approval/disapproval decision on Amendment 1. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 1. To be considered, comments must be received by the close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: April 29, 2009.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

[FR Doc. E9-10181 Filed 5-1-09; 8:45 am]

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