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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 010319075-1217-02; I.D. 011101A]

RIN 0648-AF87

#### Fisheries of the Northeastern United States; Fishery Management Plan for Tilefish

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

**ACTION:** Final rule.

**SUMMARY:** NMFS announces the approval of the Fishery Management Plan for Tilefish (FMP) and issues a final rule to implement that FMP. The final rule is designed to eliminate overfishing, as defined in that FMP, and to rebuild the tilefish stock in the northwest Atlantic Ocean by implementing: A stock rebuilding strategy; a limited entry program; a tiered commercial quota; permit and reporting requirements for commercial vessels, operators, and dealers; a prohibition on the use of gear other than longline gear by limited-access tilefish vessels; and an annual specification and framework adjustment process.

**DATES:** This final rule is effective November 1, 2001.

**ADDRESSES:** 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.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### Background

A Notice of Availability (NOA) of the FMP was published in the **Federal Register** on February 12, 2001 (66 FR 9814), with a comment period ending April 13, 2001. A proposed rule to implement the FMP was published in the **Federal Register** on April 3, 2001 (66 FR 17673), with a comment period ending May 18, 2001. The FMP was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on May 10, 2001.

This final rule is designed to eliminate overfishing as defined in the FMP and to rebuild the tilefish stock in the Northwest Atlantic Ocean by implementing: (1) A stock rebuilding strategy; (2) a limited entry program; (3) tiered commercial quota allocations or total allowable landings (TAL) for limited access and open access permit categories; (4) a prohibition on the use of gear other than longline gear for limited access tilefish vessels; (5) permit and reporting requirements for commercial vessels, operators, and dealers; and (6) an annual specification and framework adjustment process. These items form the basis for

management of the stock. Discussions and details pertaining to these items and the justification for the development of the FMP are found in the preamble to the proposed rule and the NOA and are not repeated here.

The annual quota setting process implemented by this final rule differs from that set forth in the FMP in order to incorporate the provisions of the Council's omnibus framework, Framework 1 (covering most of the Council's FMPs), which allow the Council to set aside up to 3 percent of a species' TAL to be used to compensate for research. Framework 1 established the ability to modify quotas through the annual specification process. The background of the framework and the quota modification process are discussed in the preamble to the final rule implementing Framework 1, published August 10, 2001 (66 FR 42156), for other Mid-Atlantic fisheries.

This final rule differs from the proposed rule by providing for an up to 3-percent research set-aside for tilefish and by revising the vessel reporting requirements for the tilefish Interactive Voice Response System (IVR) by requiring that vessel owners/operators report on a trip-by-trip basis, rather than on a weekly basis. Since the average tilefish trip is 10 days, this change from weekly to per trip reporting better reflects fishing practices. Paperwork Reduction Act (PRA) burden estimates for individual vessel reporting through the IVR over the entire fishing year decrease due to this change.

#### Comments and Responses

NMFS received 306 written comments on the FMP and the proposed rule. Five commenters favored the approval of the FMP and the implementing measures. The remaining commenters were opposed to one or more portions of the FMP and/or its implementing

regulations. Comments focused on the gear impacts portion of the Essential Fish Habitat (EFH) description, the stock rebuilding strategy, the limited access program and related ancillary economic impacts, implementation of the conservation recommendations described in the FEIS, and endangered species interactions.

*Comment 1.* Numerous commenters stated that the gear impacts portion of the EFH designation should be disapproved since it does not list bottom-tending mobile gear (trawls and dredges) as gear capable of destroying tilefish burrows. One commenter indicated that a conservative approach would have listed bottom-tending gear as having an adverse impact on EFH and supported a prohibition of bottom-tending gear in the Habitat Area of Particular Concern (HAPC).

*Response.* While bottom-tending mobile gear could potentially impact tilefish habitat by causing, for example, the filling or closing off of tilefish burrow openings, there is no scientific evidence showing that bottom-tending mobile gear adversely affects tilefish habitat. Tilefish burrows are subterranean and, as such, may not be susceptible to impacts from mobile gear as epibenthic (i.e., above the bottom) structures. Based on the adverse economic effects that a prohibition on the use of bottom-tending mobile gear in tilefish HAPC would have upon several other fisheries and on the lack of scientific evidence showing identifiable adverse effects caused by such gear on tilefish EFH and HAPC, the Council did not propose gear prohibitions in the HAPC on other than limited access tilefish vessels. The Council's discussion and rationale supporting its actions satisfy the requirements of 50 CFR 600.815(a)(3) to minimize, to the extent practicable, the adverse effects of fishing on EFH.

Tilefish are harvested primarily (approximately 97 percent) by longline gear; impacts on habitat from this type of gear are not detectable and, if they occur, are probably minimal and temporary. This final rule prohibits limited access tilefish vessels from using gear other than longline gear.

*Comment 2.* One commenter stated that the issues surrounding the effects of bottom trawling (long and short-term) on tilefish EFH should be resolved, and that the Council and NMFS have an obligation to prevent, mitigate, or minimize adverse effects of fishing on tilefish EFH to the extent practicable, if there is evidence that a fishing practice is having an identifiable adverse effect on EFH.

*Response.* Initially, the Council determined that bottom trawls adversely impacted EFH by destroying tilefish burrows. The determination was made by inference, using scientific reports on habitat damage caused by trawling. The adverse impact determination was included in the Council's draft Draft Environmental Impact Statement (DEIS) on which the Council held public hearings. A large number of commenters (vessel owners, fish buyers and processors) disagreed with this determination because of the lack of specific scientific evidence to support it. The Council, in response, convened a workshop comprised of tilefish experts to determine whether there was adequate information to make a determination of adverse impacts. Participants in the workshop concluded that nothing is definitively known about tilefish habitat and mobile fishing gear interactions. Based on this, the Council changed its determination in the FEIS/FMP for bottom trawls to "bottom trawl gear is not adequately identified as having an adverse effect on tilefish EFH." NMFS agrees with this determination. NMFS supports mitigative measures to prevent adverse impacts to tilefish EFH to the extent that they are practicable. NMFS and the Council support a cooperative research program to further investigate this issue. In the meantime, in the absence of any specific evidence showing there is an adverse impact on tilefish EFH from trawling, the Council chose not to propose any management measures to address the effects of trawl fishing on tilefish EFH. This final rule implements a framework mechanism to allow for the development and implementation of management measures to minimize impacts from gear on tilefish EFH should they be shown to exist.

*Comment 3.* One commenter stated that the Council's proposed rebuilding strategy, which has a 50-percent probability of rebuilding the stock within 10 years, should be replaced with a rebuilding program where stocks would have 75-percent probability of being rebuilt in 8 years.

*Response.* Section 304(e)(4)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires, for a fishery that is overfished, that an FMP specify a time period for ending overfishing and rebuilding the fishery that is as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of

fish with the marine ecosystem, and does not exceed 10 years except in cases where the biology of the stock of fish, or other environmental conditions, or management measures under an international agreement in which the United States participates, dictate otherwise. Based on the factors required by the Magnuson-Stevens Act to be considered and upon the record before the Council, NMFS agrees with the Council that, for the tilefish fishery, a stock rebuilding plan with a 50-percent probability of rebuilding the stock within 10 years is appropriate.

*Comment 4.* One commenter alleged that a constant-harvest strategy allows overfishing to occur in the near term, which is inconsistent with the requirements of the Sustainable Fisheries Act (SFA) amendments to the Magnuson-Stevens Act.

*Response.* Although a constant-harvest strategy would allow overfishing to continue in the start-up years of the FMP, this is permissible under the SFA. Section 304(e) of the Magnuson-Stevens Act contemplates Regional Fishery Management Councils to take action to end overfishing. Such action initiates rebuilding of an overfished stock. Section 304(e)(4)(A)(i) of the Magnuson-Stevens Act requires that a Council consider, among other factors, the needs of fishing communities, in specifying a time period for ending overfishing and rebuilding the fishery. Ending overfishing in a fishery that is severely overfished cannot be accomplished in the first few years without severe economic and social impacts on the participants and fishing communities. Such drastic action is not required in this instance. Furthermore, the Council projected potential economic benefits of a constant-harvest strategy, such as ease in quota management and a constant long-term economic planning horizon for industry participants.

*Comment 5.* One commenter stated that there should be a precautionary backstop in the event that stock recovery does not progress according to the rebuilding schedule, such that NMFS could adopt a reference point at 1/4 Bmsy that, if reached, would trigger the closure of the fishery.

*Response.* The regulations provide a backstop mechanism. The FMP Monitoring Committee, which is required to meet after the completion of each stock assessment, or at the request of the Council Chairman, reviews landings information and any other relevant available data to determine whether the annual quota requires modification to respond to any changes to the stock's biological reference points

or to insure that the rebuilding schedule is maintained.

*Comment 6.* Numerous commenters alleged that limited entry Option 2 should not be approved since it is not fair and equitable to all participants in the fishery.

*Response.* Limited entry Option 2 was not the option adopted by the Council and approved in the FMP. The Council adopted limited entry Option 6, which was approved by NMFS. Option 6 was recommended to the Council by present and historical industry participants in the tilefish fishery. It incorporates Option 2 for full-time vessels and allows for an expansion of the qualifying time frame for part-time vessels. Option 6 also contemplates an amendment to the limited entry program in the FMP at the end of the 10-year rebuilding period, or when the fishery is rebuilt, whichever comes first, to formalize the qualifying period for entry into the tilefish fishery from 1984 through 1998.

*Comment 7.* Several commenters stated that the tilefish limited access program does not meet the objectives of the FMP.

*Response.* The objectives of the FMP are to be accomplished through the suite of measures contained therein. It is not necessary that each management measure in an FMP accomplishes every one of the FMP's objectives. In the case of the tilefish limited access program, it will not only reduce overcapitalization, consistent with Objective 2 of the FMP, but it also will prevent overfishing and contribute to the rebuilding of the stock by limiting fishing effort and maintaining the integrity of the annual quota, which meets Objective 1. Further, the data collected through the reporting requirements applied to vessels in the limited access program fulfills the requirements of Objective 4. The identification and description of EFH in Objective 3 are accomplished through other components of the FMP.

*Comment 8.* Several commenters alleged that the FMP is devoid of discussion on how allocation alternatives further the goals of the FMP.

*Response.* NMFS disagrees. The overall goal of the FMP is to rebuild tilefish so that Optimum Yield can be obtained. To help achieve this, this rule implements a limited access system with specified amounts of TAL allocated to the various permit categories. Once the allocation or quota for a given limited access permit category is harvested, the Administrator, Northeast Region, NMFS (Regional Administrator) will close the EEZ to fishing for tilefish for that permit category for the remainder of the year.

The limitation of fishing effort represented by the limited access categories and these closures will ensure the integrity of the annual quota and facilitate rebuilding of the stock. Specific discussions of the environmental and economic impacts of these alternatives can be found in sections 3.1 and 4.7 of the FMP.

*Comment 9.* One commenter alleged that Option 6 was brokered between two factions of the industry without regard to Constitutional due process and was not considered by the Tilefish Committee. The commenter asserted that two industry groups, competitors of a current participant in the fishery, came to a compromise that was then adopted by the Council as Option 6, without analysis. The commenter believed the Council's Option 3 was reasonable and would have qualified the present participant concerned into the limited access program.

*Response.* Option 6 incorporates the same requirements as Option 2 for full-time vessels. In addition, Option 6 expands the time frame for qualifying for the part-time category by allowing for consideration of landings of at least 28,000 lb (12,701 kg) of tilefish in any 1 year from 1984 to 1993, at least one pound of which was landed prior to June 15, 1993, as a qualifying criterion. This alternative was supported by the differing factions in the tilefish fishery. The industry made a presentation to the Council regarding this alternative. After due deliberation, the Council adopted this alternative as Option 6. This alternative was thoroughly analyzed by the Tilefish Technical Committee prior to the Council adoption of the final version of the FMP. The inclusion in Option 6 of historical participants who fished as far back as 1984 was reasonable in the view of the Council, given the factors it has to consider under section 303(b)(6) of the Magnuson-Stevens Act. Option 6 was adopted during a full and open Council process; all interested parties had the opportunity to provide input and comments prior to its adoption. NMFS published a NOA and a proposed rule for further public comment. This is all part of the process of preparation, approval, and implementation of the FMP. NMFS agrees that limited access Option 3, the preferred option in the DEIS, is reasonable. However, no commenters, including the participant that the commenter is referring to, favored Option 3. The Council believed that a rejection of its preferred option of that magnitude by the industry required it to choose an alternative limited access option that would achieve the same conservation goals.

*Comment 10.* One commenter alleged that the justification for adopting Option 6 was that the Council did not have to conduct any analysis; the Council could simply adopt the agreement reached by the select group who participated in a closed meeting. The commenter also stated that a present participant's landings were not considered in the decision to adopt Option 6 and that the vessel in question will likely be unable to qualify for a full-time tier 1 category permit.

*Response.* The Council's Tilefish Technical Committee conducted an analysis of Option 6, as summarized in Table 79 in the FMP. Further, the Council's decision to adopt Option 6 was detailed in an open public forum, in which the industry participated. All data considered in analyzing the various options were contained in NMFS' official database. In addition, the Council considered additional data from vessels, which it solicited from the states (only landings from the State of New York were submitted), for the period 1988 through 1998.

Since the limited access tilefish fishery has not yet been implemented, there is no basis to determine specifically which vessels would qualify for the different limited access permit categories. Once these final regulations become effective, vessel owners will have an opportunity to apply for a particular limited access permit category and produce supporting landings information. The Council used a blind analysis, in which vessels were identified only by a random number, to ascertain the number of vessels that would qualify for the different permit categories under the different options. The Council had no information to conclude whether a specific named vessel would qualify for a particular limited access permit category.

*Comment 11.* One commenter stated that Option 6 was created for the sole purpose of restructuring the top tier of eligible fishers and that there was no biological or ecological basis to exclude a current participant from the fishery. The commenter believed Option 6 was chosen based on economic allocation as its sole purpose, which would be a violation of national standard 5.

*Response.* Option 6 did not change the tier 1 qualification criteria. It incorporated the criteria from Option 2, without modification, thereby leaving the qualifying criteria for full-time tier 1 category as follows: 250,000 lb (113,398 kg) per year for 3 years between 1993 and 1998. All the management measures are designed to work in concert to meet the overall FMP goals and objectives. It is up to the

Council to exercise discretion in arriving at options to address stock rebuilding and to minimize adverse economic impacts. The Council did not consider economic impacts on individually named vessels in its deliberations; all of the analyses it conducted were done on a blind basis. The tilefish fishery is a very small fishery. The tilefish resource is sensitive to additional fishing effort that could slow or even prevent its rebuilding, depending on the level of effort involved. The annual quota under the constant harvest strategy is 1.995 million lb (904.9 mt). The four vessels that qualify for the tier 1 permit category have the capacity to harvest in excess of this amount. These vessels harvested 2.635 million lb (1195 mt) in 1997. Limiting the number of vessels participating in this fishery will help to decrease fishing mortality and to maintain the integrity of the annual quota. Since there is a biological basis limit entry into the tilefish fishery, the commenter's allegation that such limitation violates national standard 5 is without merit.

*Comment 12.* One commenter stated that Options 5 and 6 violate national standard 4.

*Response.* Option 5 was not adopted by the Council or approved by NMFS. Thus, whether it satisfies national standard 4 is irrelevant. The FMP is designed to prevent further overcapitalization by establishing a limited entry scheme. The allegations relating to national standard 4 are that the industry groups set the qualifying criteria for the full-time tier 1 to exclude a current participant from the fishery. However, the industry compromise did not propose to modify the qualifying criteria for tier 1. Indeed, those criteria were adopted by the Council prior to its consideration of Option 6 after much discussion, much of which involved industry input. The category qualifying criteria are simply performance criteria relating to levels of landings during a certain time period to differentiate between vessels that are heavily involved in the fishery (those that landed at least 250,000 lb (113,398 kg) per year for 3 years between 1993–1998) and those that are not (those vessels that landed 90,000 lb (40,823 kg) or less during the same or earlier expanded time frame). These criteria apply evenly across the fishery to all participants and represent a reasonable means to distinguish varying levels of participation in the tilefish fishery.

*Comment 13.* One commenter alleged that the FMP fails to consider the best data available in establishing the limited

access system for tilefish and, therefore, violates national standard 2.

*Response.* NMFS disagrees. Limited access programs are designed to consider past and present participation and relative degrees of dependence on a fishery. All data used in developing the limited access permit and TAL allocations were based on the best and most recent information contained in the NMFS data base. These data constitute the best scientific information available.

*Comment 14.* One commenter stated that the tier 1 full-time qualified vessels catch small fish of which a significant majority are juveniles and sexually immature. Because of this, the commenter alleges it will be impossible for the tilefish stock to rebuild without a minimum fish size provision.

*Response.* It is possible that present participants are currently landing large numbers of small fish. However, there is evidence that, as the stock biomass decreases, a disproportionate number of smaller fish occur in the population. As the stock rebuilds and the age structure of the stock expands, the tendency to harvest small fish will decrease. A minimum fish size and gear restrictions are listed in the FMP as measures the Council could implement in the future through framework adjustment provisions, should data become available demonstrating such measures to be necessary and appropriate.

*Comment 15.* Several commenters indicated that the regulations and the FMP are not consistent with national standard 1.

*Response.* The FMP implements a rebuilding program that will prevent overfishing and attain Maximum Sustainable Yield (MSY) through a constant harvest strategy (within a reasonable time). The rebuilding strategy chosen is based on analyses conducted by the NMFS Northeast Fisheries Science Center (NEFSC) and has a 50-percent probability of rebuilding tilefish to the biomass that will support the MSY level within 10 years. The Council considered 13 rebuilding schedules that were either based on constant harvest levels or fishing mortality reduction levels, all of which were designed to rebuild to the biomass that will support MSY. The critical choices that the Council made were the selection of the time frame of 10 years for rebuilding and of the probability of rebuilding within that time frame of 50-percent. In addition, a benchmark stock assessment will be conducted every 3 years through the NEFSC Stock Assessment Review Committee (SARC)/Stock Assessment Workshop (SAW) process, the results of

which will be evaluated by the Tilefish FMP Monitoring Committee. The Council will consider any recommendations of the Monitoring Committee and can adjust the annual harvest level in order to assure that the tilefish stock will be rebuilt within 10 years. This management strategy is consistent with national standard 1.

*Comment 16.* One commenter alleged that the preamble of the proposed regulations is inaccurate with respect to the discussion of the economic impacts of the FMP. The commenter stated that numbers clearly qualify a current vessel participant for a full-time tier 2 permit, yet the vessel is not included in the analysis.

*Response.* All of the analyses performed by the Council were blind. No individual vessels were identified in these analyses. The analyses employed the best and most recent data available in the NMFS database. The FMP has yet to be implemented. Once these regulations become effective, the participant concerned can apply for the full-time tier 2 category permit by submitting supporting landings information. If the participant's application is denied, the participant has the right to appeal the denial. The FMP and its implementing regulations include a provision for appeal, and individuals will be given an opportunity to document any landings they believe are inaccurate after the FMP is implemented.

*Comment 17.* One commenter believed that the FMP does not comply with national standard 1, and, notwithstanding data before the Secretary, the Secretary, in violation of national standard 2, failed to consider all the relevant economic impacts, and to use the best scientific and commercial information in approving the FMP.

*Response.* See the response to Comment 4 related to national standard 1. All data used in developing the FMP and its management measures were based on the best and most recent information contained in the NMFS database. These data constitute the best scientific information available. Thus, the FMP does not violate national standard 2.

*Comment 18.* One commenter stated that the Magnuson-Stevens Act requires that all the fishery management plans be consistent with other applicable laws. The commenter believes other applicable laws include the antitrust laws, which the commenter believes were violated during the FMP development process.

*Response.* Under the Noerr-Pennington doctrine, antitrust law does

not prohibit two or more persons from associating together to petition a government body to take a particular action with respect to a law that would produce a restraint of trade or monopoly. Thus, the industry's presentation to the Council of a further option it favored to manage the tilefish fishery did not violate antitrust law.

*Comment 19.* One commenter suggested that workable, protective measures to protect endangered species are preferable to cooperation between enforcement agencies and tilefish fishermen, as advocated in the FMP, to ensure compliance with the Endangered Species Act (ESA).

*Response.* NMFS conducted a formal section 7 consultation for the FMP, consistent with ESA guidelines. The biological opinion accompanying the consultation concluded that the tilefish fishery may take a small number of loggerhead and leatherback sea turtles. This small take is not expected to result in jeopardy to either sea turtle species or to other endangered and/or threatened species under NMFS' jurisdiction, including right whales and their critical habitat. Thus, protection measures for these species are not necessary at this time.

*Comment 20.* Several commenters, including a bait dealer, three crew members, a wharf owner, and a tackle dealer, claimed that the implementation of a limited access program and the commensurate reduction in potential harvest for a particular vessel would have significant negative economic impacts on their businesses and livelihoods.

*Response.* NMFS recognizes that there may be ancillary economic impacts on small entities, other than dealers and vessels, from actions that reduce fishing activity. Since the number of present participants in the fishery is small (from a total of 215 vessels that landed any tilefish in 1998, the FMP identified 4 full-time tier 1; 4 full-time tier 2; and 42 part-time vessels), it would seem unlikely that they would provide a major share of revenues to dockside businesses. Crew members are not considered to be small businesses under the Regulatory Flexibility Act. Because the limited entry scheme is based in large part on recent participation in the fishery, it is highly likely that tilefish vessels currently patronizing these businesses will continue to do so, possibly in conjunction with participation in other fisheries. Further, the constant harvest strategy adopted in the FMP should provide for a steadier fishery and income for all concerned. However, NMFS recognizes that limited access could yield negative economic

impacts for all entities affected by the final rule. Economic impacts on communities affected by the tilefish fishery were considered by the Council and are addressed in the FMP.

#### **Changes From the Proposed Rule**

In § 648.2, a definition of the tilefish management unit is added to distinguish management of the northern portion of the tilefish stock under the FMP, from management of the southern portion of the tilefish stock under the NMFS Southeast Region Snapper/Grouper fisheries.

In § 648.4, paragraph (a)(12) is revised to clarify that tilefish fished for, possessed, or landed in or from the EEZ means tilefish in or from the tilefish management unit.

In § 648.4, paragraph (a)(12)(i) is revised to clarify that the vessel must have landed the specified amounts of tilefish under paragraph (a)(12)(i)(A) within the tilefish management unit to qualify for a limited access tilefish permit.

In § 648.4, paragraph (a)(12)(ii), the title and paragraph (a)(12)(ii)(A) are removed, the subsequent paragraphs (a)(12)(ii)(B) through (M) are redesignated as paragraphs (a)(12)(i)(B) through (M), and the removed title and paragraph language are added to the newly redesignated paragraph (a)(12)(i)(I) (previously reserved).

In § 648.4, the newly redesignated paragraph (a)(12)(i)(M)(3)(ii) is redesignated paragraph (a)(12)(ii) and revised to clarify the description of eligibility and conditions for issuance of tilefish incidental catch permits and to indicate that vessels with tilefish incidental catch permits may only possess or land tilefish in or from the tilefish management unit.

In § 648.4, the newly redesignated paragraph (a)(12)(i)(M)(3)(i) is redesignated as the text of paragraph (a)(12)(i)(M)(3).

In § 648.4, paragraph (b) is revised to clarify that any vessel owner whose vessel is permitted to fish in the tilefish management unit for the species managed under the FMP must comply with the more restrictive of either state, local or Federal regulations.

In § 648.5, paragraph (a) is revised to clarify that any vessel operators who are fishing for or possessing tilefish taken from the tilefish management unit must have a valid operator permit.

In § 648.7, paragraph (a)(2)(i) is corrected to include tilefish as a species of fish that is not required to be reported by federally permitted dealers through the IVR system.

In § 648.7, paragraph (b)(1)(iv) is corrected by removing paragraphs

(b)(1)(iv)(A) and (B), and by revising paragraph (b)(1)(iv) to state that IVR reports must be submitted on a per-trip basis, rather than on a weekly basis.

In § 648.12, the introductory text is corrected to show that tilefish has been redesignated from subpart M to subpart N of 50 CFR part 648. Subpart M has been assigned to the Atlantic Deep-Sea Red Crab Fishery; therefore "Management Measures for the Tilefish Fishery" will appear as subpart N.

In § 648.14, paragraphs (x)(11) and (cc)(1), (2), (3), (8), and (9) are modified to clarify that the prohibitions apply to activities dealing with tilefish harvested in or from the tilefish management unit.

In § 648.14, the introductory text of paragraph (cc) is modified to exempt vessels participating in a research activity, as described in § 648.290 (previously § 648.250), from the general prohibitions specified at § 600.725.

In § 648.14, paragraph (cc)(4) is removed because there is no processor permit. Subsequent paragraphs in paragraph (cc) have been renumbered and the comments that follow refer to the renumbered paragraphs.

In § 648.14, paragraph (cc)(6) is revised to include the gear restriction related to other than longline gear.

In § 648.14, paragraphs (cc)(7) and (8) are revised to update the reference.

In § 648.14, paragraph (cc)(9) is added to specify that the landing of tilefish harvested by vessels fishing in U.S. waters in excess of the incidental catch limit is prohibited in the tilefish management unit, unless the vessel holds a limited access tilefish permit.

In subpart N, §§ 648.250 through 648.254 have been redesignated as §§ 648.290 through 648.294, respectively, for consecutive numbering.

In § 648.290 (previously § 648.250), paragraphs (b) and (d) are revised and paragraph (e) is added to allow for the set-aside of up to 3-percent of the tilefish TAL for purposes of compensation for research, consistent with Framework 1.

Section 648.294 (previously § 648.254) has been revised to specify the gear stowage requirements for gear other than longline gear.

#### **Classification**

NMFS has determined that the FMP that this rule implements is necessary for the conservation and management of the tilefish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared a FEIS for this FMP; a notice of availability was

published on February 12, 2001 (66 FR 9814). NMFS determined, upon review of the FMP/FEIS and public comments, that approval and implementation of the FMP is preferable to the status quo and other considered alternatives. The FMP contains management measures capable of preventing overfishing; providing economic and social benefits to the fishing industry in the long term; and contributing to enhancement of the ecosystem through a rebuilt tilefish resource.

NMFS prepared a final regulatory flexibility analysis (FRFA) for this action, which complies with Section 604 of the Regulatory Flexibility Act. The FRFA includes the IRFA, comments on the IRFA, responses to those comments as contained in this preamble, and a summary of the analyses done in support of this final rule. The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A summary of the FRFA follows:

A description of the reasons why action by the agency is being considered and the objectives of the action are explained in the preamble to the proposed rule and are not repeated here. This action contains reporting and recordkeeping requirements that were analyzed in the IRFA. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

#### Public Comments

Three hundred and six comments were submitted during the comment periods on the FMP and proposed rule. The majority of comments were not specifically on the IRFA, but several were related to economic impacts on small entities. The comments and responses are contained in the Comments and Responses section of the preamble of this final rule and are not repeated here. Comments 6, 9, 10, 11, 12, 13, 16, and 17 were specifically directed at the economic consequences of the FMP and, particularly, at the limited entry program and its potential impacts on individual vessels, all of which are small entities.

#### Number of Small Entities

All of the businesses (fishing vessels, dealers and processors) affected by this final rule are considered small entities. In 1998, 215 different vessels landed tilefish along the Atlantic coast. In 1998, 83 federally permitted seafood dealers handled tilefish. Fewer than three permitted processors reported

processing tilefish in 1998 for the Northeast and Southeast Regions combined. Tilefish constituted a very small percentage of their total volume and value of processed products.

#### Cost of Compliance

It is estimated that, in 1998, 215 different vessels landed tilefish along the Atlantic coast. Under this final rule, any vessel fishing commercially for tilefish must obtain a Federal vessel tilefish permit in order to fish for tilefish in the EEZ. From January 1, 1988, to June 15, 1993, 312 vessels landed at least 1 lb (0.45 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 permit applications as a result of this final rule. Overhead costs herein are based on an estimated \$15.00 per hour. Annual initial costs for vessel permits are estimated to be \$106 (\$0.34 per vessel x 312 vessels) for postage and \$2,340 (\$7.50 per vessel x 312 vessels) for clerical costs. Annual initial costs for dealer permits are estimated to be \$3.40 (\$0.34 x 10 dealers) for postage and \$12.50 (\$1.25 per dealer x 10 dealers) for clerical costs. It is estimated that 85 of the vessels expected to apply for an initial vessel permit do not presently possess a Northeast fisheries permit; therefore, for operator permits, an annual cost of \$29 (\$0.34 per operator x 85 vessels) for postage is expected and an annual cost of \$1750 (\$15.00 per operator x 85 vessels) for clerical costs is expected. Also, a cost of \$850 (\$10 per vessel x 85 vessels) is expected 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 as follows: \$1.70 (0.34 per vessel x 5 vessels) for postage, and \$225 (\$45.00 x 5 vessels) for clerical costs. Eighty-five vessels currently do not report under the system in place for Northeast permit holders; therefore, annual costs of submitting vessel logbooks are expected to be \$347 (\$4.08 x 85 vessels) for postage and \$1,275 (\$15.00 per vessel x 85 vessels) for clerical costs. Annual costs of submitting dealer reports are expected to be \$177 (\$17.70 per dealer x 10 dealers) for postage and \$260 (\$26.0 x 10 dealers) for clerical costs.

#### Minimizing Economic Impacts on Small Entities

The 10-year constant harvest rebuilding strategy using a 50-percent probability of meeting the rebuilding

target of 10 years will allow greater landings during the initial years of the FMP implementation than any alternative strategy considered by the Council. For example, the highest constant F strategy ( $F=.168$ ) would have allowed only 1.299 million lb (589.2 mt) to be landed in fishing year 2001, compared to 1.995 million lb (904.9 mt) resulting from the preferred strategy. Landing levels under status quo for 2001 were projected to be 2.3 million lb (1043 mt) for all permit categories, or 305,000 lb (138 mt) more than the quota under the preferred management option. However, the long-term benefits of the preferred management strategy will likely outweigh the short-term negative economic impacts to all vessels, dealers, and other segments of the industry. At an ex-vessel price of \$2.00 per lb (\$0.90 per kg) revenues of approximately \$600,000 will be foregone in 2001 under the preferred management strategy, though the effects will be disproportionately distributed among the limited access permit categories, due to their different quota allocations. Vessels in the tier 1 full-time category (66 percent), assuming equal landings among vessels within the category, have the potential to be affected the most, followed by part-time vessels (19 percent), tier 2 full-time category vessels (15 percent), and vessels in the incidental catch category (5 percent).

Because tilefish are overfished, the Council determined that it was necessary to limit access into the fishery, not only due to the condition of the stock, but the rate at which the present fishery was harvesting tilefish. The Council further recognized that short-term economic losses for the aggregate of vessels and dealers would result from implementation of severe constraints on harvest. Unfortunately, there is no mechanism to mitigate entirely the aggregate negative short-term impacts of these measures on vessels participating in a limited access fishery.

The FMP maintains present participation in the tilefish fishery, while recognizing that not all vessels will qualify for limited access permits. The FMP allows vessel owners who apply for an individual permit category, to furnish proof of landings, and to appeal if a limited access permit application is denied by NMFS. This allows vessels that did not pre-qualify for permits to apply and qualify for a limited access permit category. Vessels that landed tilefish in the 1980s have an opportunity to participate in the fishery under the part-time permit category if they have the requisite level of landings,

even though they did not appear in the NMFS database.

This final rule contains new collection-of-information requirements and also subjects persons to collection-of-information requirements not contained in the rule. For example, persons obtaining vessel permits under this rule automatically become subject to vessel trip reporting requirements, although the later are not mentioned in this rule. Both types of requirements are subject to the PRA and were approved by the Office of Management and Budget (OMB). The OMB control numbers and the estimated time for a response are as follows:

Tilefish vessel permits, OMB control number 0648-0202 (30 minutes/response).

Tilefish vessel permits renewal, OMB control number 0648-0202 (15 minutes/response).

Tilefish vessel permit appeals, OMB control number 0648-0202 (180 minutes/response).

Tilefish vessel confirmations of permit history, OMB control number 0648-0202 (30 minutes/response).

Tilefish vessel replacements or upgrades, OMB control number 0648-0202 (180 minutes/response).

Operator permits, OMB control number 0648-0202 (60 minutes/response).

Dealer permits, OMB control number 0648-0202 (5 minutes/response).

Annual processor reports, OMB control number 0648-0018 (30 minutes/response).

Vessel trip reports, OMB control number 0648-0212 (5 minutes/response).

IVR system vessel reports, OMB control number 0648-0212 (4 minutes/response).

IVR system dealer reports, OMB control number 0648-0229 (4 minutes/response).

Dealer logbook reports, OMB control number 0648-0229 (2 minutes/response).

Vessel Identification, OMB control number 0648-0350 (45 minutes/response).

The aforementioned response 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. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

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.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping Requirements.

Dated: September 19, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is 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). \* \* \*

\* \* \* \* \*

3. In § 648.2, the definition of "Council" is revised and new definitions for "Tilefish FMP Monitoring Committee" and "Tilefish Management Unit" are 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.

*Tilefish Management Unit* means an area of the Atlantic Ocean from the latitude of the VA and NC border (36°33.36' N. Lat.), extending eastward from the shore to the outer boundary of the exclusive economic zone and northward to the United States-Canada border in which the United States exercises exclusive jurisdiction over all golden tilefish (*Lopholatilus chamaeleonticeps*) fished for, possessed, caught or retained in or from such area.

\* \* \* \* \*

4. In § 648.4, paragraph (a)(12) is added and paragraph (b) is 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, possess, or land tilefish in or from the tilefish management unit.

(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, provided that the vessel landed the specified amounts of tilefish to meet such criteria within the tilefish management unit:

(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, at least



1 lb (2.20 kg) of which was landed prior to June 15, 1993.

(B) *Application/renewal restriction—(1) Initial application.* A vessel owner must apply for an initial limited access tilefish permit before November 1, 2002, one year from the effective date of the regulations.

(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) *Limited access permit restrictions.* (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 tilefish permit may not be issued an incidental catch tilefish permit during a fishing year.

(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.* 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.* A vessel of the United States that is subject to these regulations and that has not been issued a limited access tilefish permit is eligible for and may be issued a tilefish incidental catch permit to possess or land tilefish in or from the tilefish management unit. 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 except tilefish managed under this part must comply with the more restrictive requirement. 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 tilefish management unit for tilefish 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 coast-wide 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, or bluefish harvested in or from the EEZ, or tilefish harvested in or from the tilefish management unit, 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)(1) 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.

\* \* \* \* \*

7. In § 648.7, the first sentence of 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) \* \* \*

(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 and tilefish; reporting week in which species were purchased; and state of landing for each species purchased. \* \* \*

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) The owner or operator of any vessel issued a limited access permit for tilefish must submit a tilefish catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, trip during which species are caught, and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

\* \* \* \* \*

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), M (deep-sea red crab), and N (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 in or from the tilefish management unit, 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, unless participating in a research activity as described in § 648.290(e), it is unlawful for any person owning or operating a vessel 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 tilefish management unit 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 tilefish management unit 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 tilefish management unit, 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 tilefish management unit, without having been issued, and in possession of, a valid tilefish dealer permit.

(4) 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.

(5) 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.

(6) Fish for tilefish, with any other than longline gear, while in possession of a limited access permit, as specified in § 648.294.

(7) Possess tilefish harvested in or from the tilefish management unit in excess of the trip limit, pursuant to § 648.292, unless issued a limited access tilefish permit.

(8) Land tilefish harvested in or from the tilefish management unit for sale after the effective date of the notification in the **Federal Register**, pursuant to § 648.291, which notifies permit holders in a limited access category that the quota for that category is no longer available.

(9) Land tilefish in or from the tilefish management unit, in excess of the trip limit pursuant to § 648.292, unless the vessel holds a valid limited access tilefish permit.

11. In 50 CFR part 648, subpart N is added to read as follows:

#### **Subpart N—Management Measures for the Tilefish Fishery**

Sec.	
648.290	Catch quotas and other restrictions.
648.291	Closures.
648.292	Tilefish trip limits.
648.293	Framework specifications.
648.294	Gear restrictions.

#### **Subpart N—Management Measures for the Tilefish Fishery**

##### **§ 648.290 Catch quotas and other restrictions.**

The fishing year is the 12-month period beginning with November 1, 2001.

(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) *TAL allocation.* For each fishing year, up to 3 percent of the TAL may be set aside for the purpose of funding research. Once a research TAC, if any, is set aside, the TAL will first be reduced by 5 percent to adjust for the incidental catch. The remaining 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 of the quota for any limited access category that occur 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 next fishing year, the appropriate TAL for the

next fishing year, the percentage of TAL allocated to research quota, 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 and any management measures to assure that the TAL will not be exceeded. After considering public comments, NMFS will publish a final rule in the **Federal Register** to implement a TAL and any management measures. The previous year's specifications will remain effective unless revised through the specification process and/or the research quota process described in paragraph (e) of this section. NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

(e) *Research quota.* See § 648.21(g).

##### **§ 648.291 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]

##### **§ 648.292 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.

##### **§ 648.293 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.

(1) *Specific management measures.* The following specific management measures may be implemented or adjusted at any time through the framework process:

- (i) Minimum fish size,
- (ii) Minimum hook size,
- (iii) Closed seasons,
- (iv) Closed areas,
- (v) Gear restrictions or prohibitions,
- (vi) Permitting restrictions,
- (vii) Gear limits,

(viii) Trip limits,  
 (ix) Overfishing definition and related thresholds and targets,  
 (x) Annual specification quota setting process,  
 (xi) Tilefish FMP Monitoring Committee composition and process,  
 (xii) Description and identification of EFH,  
 (xiii) Fishing gear management measures that impact EFH,  
 (xiv) Habitat areas of particular concern, and  
 (xv) Set-aside quotas for scientific research.

(2) *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.

(3) *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.

(4) *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.

#### **§ 648.294 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, or possess gear other than longline gear unless properly stowed in accordance with § 648.23.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 010112013-1013-01; I.D. 091701A]

### **Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock**

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

**ACTION:** Reallocation.

**SUMMARY:** NMFS is reallocating projected unused amounts of Bering Sea subarea (BS) pollock from the incidental catch account to the directed fisheries. This action is necessary to allow the 2001 total allowable catch (TAC) of pollock to be harvested.

**DATES:** Effective September 20, 2001 until 2400 hrs, A.l.t., December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(C)(1) and the American Fisheries Act (AFA) (Public Law 105-277, Division C, Title II), NMFS specified a pollock incidental catch allowance equal to 4 percent of the pollock TAC after subtraction of the 10 percent Community Development Quota reserve in the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001, and 66 FR 37167, July 17, 2001).

As of August 25, 2001, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that approximately 24,910 metric tons (mt) of pollock remain in the incidental catch account. Based on projected harvest rates of other groundfish species and the expected bycatch of pollock in those fisheries, the