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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120416018-3679-02]

RIN 0648-BC05

Fisheries of the Northeastern United States; Tilefish Fishery Management Plan; Regulatory Amendment, Corrections, and Clarifications

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

ACTION: Final rule.

SUMMARY: This action makes corrections, clarifications, and other modifications to the regulations that implemented the Tilefish Individual Fishing Quota Program. These changes will not affect the fishing operation of any vessel.

DATES: Effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, phone (978) 281-9341, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2009, NMFS published a final rule (74 FR 42580) to implement provisions of Amendment 1 to the Tilefish Fishery Management Plan (FMP) (Amendment 1). Amendment 1 included a new structure for managing the commercial tilefish fishery

using an individual fishing quota (IFQ) system. The new tilefish IFQ program became effective November 1, 2009. After 3 years of operation, it has become apparent that some of the implementing regulations need to be clarified, corrected, or modified to better reflect the intent of Amendment 1.

On March 28, 2013, NMFS published a proposed rule in the Federal Register (78 FR 18947) proposing several minor corrections, clarifications, and modifications to the regulations implementing Amendment 1. Comments on the proposed rule were accepted through April 29, 2013. No comments were received on the measures, and the measures, as proposed, are implemented by this final rule.

The purpose of this action is to clarify, correct, and/or modify certain provisions of the tilefish IFQ program's implementing regulations to clarify potentially confusing regulatory language, and to better reflect the intent of Amendment 1 and current practices under the tilefish IFQ program. Specifically, this action (1) clarifies the two aspects of tilefish IFQ allocation by differentiating between quota share and quota pounds, and removes suggestions that either are "owned" or "permanent;" (2) specifies in the regulations that tilefish landings may be reported through the Interactive Voice Response system, or through another system approved by the NMFS Northeast Regional Administrator, to allow for the future development of an online reporting option; (3) corrects cross-references within the regulations pertaining to the Research Set-Aside Program; (4) revises language and cross-references in the regulations to clarify that permanent resident aliens are allowed to hold a tilefish IFQ allocation permit, as specified in Amendment 1; (5) modifies the regulations to extend the deadline for quota pound transfers from September 1 to October 10 of each fishing year; and (6) modifies the regulations governing the cost recovery fee collection

system to reflect current fee collection practices and the intent of Amendment 1 to ensure clear and efficient collection of the required cost-recovery fees. Additional detail and explanation regarding the reason for these changes are provided in the proposed rule and are not repeated here.

Changes from the Proposed Rule

The proposed regulatory text regarding IFQ transfer applications inadvertently used the less specific term “catch share.” The regulatory language has been corrected to use the more appropriate term “quota share,” consistent with the terminology used in rest of that regulatory paragraph. The introductory text on IFQ transfer applications has been adjusted to more clearly explain why applications for permanent transfers are due before September 1, while applications for temporary transfers are due before October 10.

Comments and Responses

NMFS received no comments on the proposed rule.

Classification

The Administrator, Northeast Region, NMFS, determined that this final rule is necessary for the management of the tilefish fishery and that it is consistent with the Tilefish FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number

of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$4.0 to \$19.0 million, Shellfish Fishing from \$4.0 to \$5.0 million, and Other Marine Fishing from \$4.0 to \$7.0 million. Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20, 2013, final rule, a certification was developed for this action using SBA's former size standards. Subsequent to the June 20, 2013, rule, NMFS has reviewed the certification prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 8, 2013

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

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 § 648.2, the definitions of “Interest in an IFQ allocation” and “Lessee” are revised to read as follows:

§ 648.2 Definitions.

Interest in an IFQ allocation means: An allocation of quota share or annual IFQ allocation held by an individual; or by a company in which the individual is an owner, part owner, officer, shareholder, or partner; or by an immediate family member (an individual's parents, spouse, children, and siblings).

Lessee means:

(1) A vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at § 648.82(k); or

(2) A person or entity eligible to hold tilefish IFQ allocation, who receives temporarily transferred tilefish IFQ allocation, as specified at § 648.294(e)(1).

3. In § 648.7, paragraph (b)(2)(ii) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(b)***

(2)***

(ii) Tilefish vessel owners or operators. The owner or operator of any vessel fishing under a tilefish IFQ allocation permit issued under this part, as described in § 648.294(a), must submit a tilefish catch report by using the IVR system, or other reporting system approved by the Regional Administrator, within 48 hours after returning to port and offloading. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification; trip during which tilefish are caught; pounds landed; VTR pre-printed serial number; and the Federal dealer number for the dealer who purchases the tilefish. This reporting requirement does not exempt the owner or operator from other applicable reporting requirements of this section.

4. In § 648.292, paragraph (e) is revised to read as follows:

§ 648.292 Tilefish specifications.

(e) Research quota. See § 648.22(g).

5. Section 648.294 is revised to read as follows:

§ 648.294 Individual fishing quota (IFQ) program.

(a) IFQ allocation permits. (1) After adjustments for incidental catch, research set-asides, and overages, as appropriate, pursuant to § 648.292(c), the Regional Administrator shall divide the remaining TAL among the IFQ quota share holders who held IFQ quota share as of September 1 of a given fishing year. Allocations shall be made by applying the IFQ quota share percentages that exist on September 1 of a given fishing year to the IFQ TAL pursuant to § 648.292(c), subject to any deductions for overages pursuant to paragraph

(f) of this section. Amounts of IFQ allocation of 0.5 lb (0.23 kg) or smaller created by this calculation shall be rounded downward to the nearest whole number, and amounts of IFQ allocation greater than 0.5 lb (0.23 kg) shall be rounded upward to the nearest whole number, so that annual IFQ allocations are specified in whole pounds.

(2) Allocations shall be issued in the form of an annual IFQ allocation permit. The IFQ allocation permit shall specify the quota share percentage held by the IFQ allocation permit holder and the total pounds of tilefish that the IFQ allocation permit holder is authorized to harvest.

(3) In order to be eligible to hold tilefish IFQ allocation, an individual must be a U.S. citizen or permanent resident alien. Businesses or other entities that wish to hold allocation must be eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b).

(b) Application -- (1) General. Applicants for a permit under this section must submit a completed application on an appropriate form obtained from NMFS. The application must be filled out completely and signed by the applicant. Each application must include a declaration of all interests in IFQ quota shares and IFQ allocations, as defined in § 648.2, listed by IFQ allocation permit number, and must list all Federal vessel permit numbers for all vessels that an applicant owns or leases that would be authorized to possess tilefish pursuant to the IFQ allocation permit. The Regional Administrator will notify the applicant of any deficiency in the application.

(i) [Reserved]

(ii) Renewal applications. Applications to renew an IFQ allocation permit must be received by September 15 to be processed in time for the November 1 start of the next fishing year. Renewal applications received after this date may not be approved, and a new

permit may not be issued before the start of the next fishing year. An IFQ allocation permit holder must renew his/her IFQ allocation permit on an annual basis by submitting an application for such permit prior to the end of the fishing year for which the permit is required. Failure to renew an IFQ allocation permit in any fishing year will result in any IFQ quota share held by that IFQ allocation permit holder to be considered abandoned and relinquished.

(2) Issuance. Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by September 15, as specified in paragraph (b)(1)(ii) of this section, NMFS shall issue annual IFQ allocation permits on or before October 31 to those who hold IFQ quota share as of September 1 of the current fishing year. From September 1 through October 31, permanent transfer of IFQ quota share is not permitted, as described in paragraph (e)(4) of this section.

(3) Duration. An annual IFQ allocation permit is valid until October 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904; revised due to a transfer of all or part of the IFQ quota share or annual IFQ allocation under paragraph (e) of this section; or suspended for non-payment of the cost recovery fee as described in paragraph (h)(4) of this section.

(4) IFQ Vessel. All Federal vessel permit numbers that are listed on the IFQ allocation permit are authorized to possess tilefish pursuant to the IFQ allocation permit until the end of the fishing year or until NMFS receives written notification from the IFQ allocation permit holder that the vessel is no longer authorized to possess tilefish pursuant to the subject permit. An IFQ allocation permit holder who wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ allocation permit must send written

notification to NMFS. This notification must include the vessel name and permit number, and the dates on which the IFQ allocation permit holder desires the vessel to be authorized to land tilefish pursuant to the IFQ allocation permit. A copy of the IFQ allocation permit must be carried on board each vessel so authorized to possess IFQ tilefish.

(5) Alteration. An annual IFQ allocation permit that is altered, erased, or mutilated is invalid.

(6) Replacement. The Regional Administrator may issue a replacement permit upon written application of the annual IFQ allocation permit holder.

(7) Transfer. The annual IFQ allocation permit is valid only for the person to whom it is issued. All or part of the IFQ quota share or the annual IFQ allocation specified in the IFQ allocation permit may be transferred in accordance with paragraph (e) of this section.

(8) Abandonment or voluntary relinquishment. Any IFQ allocation permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to pay a recoverable cost fee, in accordance with the requirements specified in paragraph (h)(2) of this section, or for failure to renew in accordance with paragraph (b)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year.

(c)-(d) [Reserved]

(e) Transferring IFQ allocations -- (1) Temporary transfers. Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, the initial holder of an annual IFQ allocation may transfer the entire annual IFQ allocation, or a portion of the annual IFQ allocation, to any person or entity eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section. Annual IFQ allocation transfers shall be effective only for the fishing year in which the transfer is requested and processed, unless the applicant specifically

requests that the transfer be processed for the subsequent fishing year. The Regional Administrator has final approval authority for all annual IFQ allocation transfer requests. The approval of a temporary transfer may be rescinded if the Regional Administrator finds that an emergency has rendered the lessee unable to fish for the transferred annual IFQ allocation, but only if none of the transferred allocation has been landed.

(2) Permanent transfers. Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, and subject to final approval by the Regional Administrator, a holder of IFQ quota share may permanently transfer the entire IFQ quota share allocation, or a portion of the IFQ quota share allocation, to any person or entity eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section.

(3) IFQ allocation transfer restrictions. (i) If annual IFQ allocation is temporarily transferred to any eligible person or entity, it may not be transferred again within the same fishing year, unless the transfer is rescinded due to an emergency, as described in paragraph (e)(1) of this section.

(ii) A transfer of IFQ allocation or quota share will not be approved by the Regional Administrator if it would result in an entity holding, or having an interest in, a percentage of IFQ allocation exceeding 49 percent of the total tilefish adjusted TAL.

(iii) For the purpose of calculating the appropriate IFQ cost recovery fee, if the holder of an IFQ allocation leases additional IFQ allocation, the quantity and value of landings made after the date the lease is approved by the Regional Administrator are attributed to the transferred quota before being attributed to the allocation holder's base IFQ allocation, if any exists. In the event of multiple leases, landings would be attributed to the leased allocations in the order the leases were approved by the Regional Administrator. As described in

paragraph (h) of this section, a tilefish IFQ quota share allocation holder shall incur a cost recovery fee, based on the value of landings of tilefish authorized under the allocation holder's annual tilefish IFQ allocation, including allocation that is leased to another IFQ allocation permit holder.

(4) Application for an IFQ allocation transfer. Any IFQ allocation permit holder applying for either permanent transfer of IFQ quota share or temporary transfer of annual IFQ allocation must submit a completed IFQ Allocation Transfer Form, available from NMFS. The IFQ Allocation Transfer Form must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicant desires to have the IFQ allocation transfer effective. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications for permanent IFQ quota share allocation transfers must be received by September 1 to be processed and effective before annual IFQ allocations are issued for the next fishing year. Applications for temporary IFQ allocation transfers must be received by October 10 to be processed for the current fishing year.

(i) Application information requirements. An application to transfer IFQ allocation must include the following information: The type of transfer (either temporary or permanent); the signature of both parties involved; the price paid for the transfer; a declaration of the recipient's eligibility to receive IFQ allocation; the amount of allocation or quota share to be transferred; and a declaration, by IFQ allocation permit number, of all the IFQ allocations in which the person or entity receiving the IFQ allocation has an interest. The person or entity receiving the IFQ allocation must indicate the permit numbers of all

federally permitted vessels that will possess or land the IFQ allocation. Information obtained from the IFQ Allocation Transfer Form is confidential pursuant to 16 U.S.C. 1881a.

(ii) Approval of IFQ transfer application. Unless an application to transfer IFQ quota share and/or annual IFQ allocation is denied according to paragraph (e)(4)(iii) of this section, the Regional Administrator shall issue confirmation of application approval in the form of a new or updated IFQ allocation permit to the parties involved in the transfer within 30 days of receipt of a completed application.

(iii) Denial of IFQ transfer application. The Regional Administrator may reject an application to transfer IFQ quota share or annual IFQ allocation for the following reasons: The application is incomplete; the transferor does not possess a valid tilefish IFQ allocation permit; the transferor's or transferee's vessel or tilefish IFQ allocation permit has been sanctioned pursuant to an enforcement proceeding under 15 CFR part 904; the transfer would result in the transferee having a tilefish IFQ allocation or holding IFQ quota share that exceeds 49 percent of the adjusted TAL allocated to IFQ allocation permit holders; the transfer is to a person or entity that is not eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section; the transferor or transferee is delinquent in payment of an IFQ cost recovery fee as described in paragraph (h)(4) of this section; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

(f) IFQ allocation overages. If an IFQ allocation is exceeded, including by amounts of tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, the amount

of the overage will be deducted from the IFQ shareholder's allocation in the subsequent fishing year(s). If an IFQ allocation overage is not deducted from the appropriate allocation before the IFQ allocation permit is issued for the subsequent fishing year, a revised IFQ allocation permit reflecting the deduction of the overage shall be issued by NMFS. If the allocation cannot be reduced in the subsequent fishing year because the full allocation has already been landed or transferred, the IFQ allocation permit will indicate a reduced allocation for the amount of the overage in the next fishing year.

(g) IFQ allocation acquisition restriction. No person or entity may acquire more than 49 percent of the annual adjusted tilefish TAL, specified pursuant to § 648.294, at any point during a fishing year. For purposes of this paragraph, acquisition includes any permanent transfer of IFQ quota share or temporary transfer of annual IFQ allocation. The calculation of IFQ allocation for purposes of the restriction on acquisition includes IFQ allocation interests held by: A company in which the IFQ holder is a shareholder, officer, or partner; an immediate family member; or a company in which the IFQ holder is a part owner or partner.

(h) IFQ cost recovery. As required under section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the Regional Administrator shall collect a fee to recover the actual costs directly related to the management, data collection and analysis, and enforcement of the tilefish IFQ program.

(1) Payment responsibility. Each tilefish IFQ allocation permit holder with quota share shall incur a cost recovery fee annually, based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation, including allocation that he/she leases to another IFQ allocation permit holder. The tilefish IFQ allocation permit holder is responsible for paying the fee assessed by NMFS.

(2) IFQ fee determination. The tilefish IFQ cost recovery billing period runs annually from January 1 through December 31.

(i) Determination of total recoverable costs. The Regional Administrator shall determine the actual costs directly associated with the management, data collection and analysis, and enforcement of the tilefish IFQ program incurred by NMFS during the cost recovery billing period.

(ii) Calculating fee percentage. The recoverable costs determined by the Regional Administrator will be divided by the total ex-vessel value of all tilefish IFQ landings during the cost recovery billing period to derive a fee percentage. Each IFQ allocation permit holder with quota share will be assessed a fee based on the fee percentage multiplied by the total ex-vessel value of all landings under his/her IFQ allocation permit, including landings of allocation that was leased to another IFQ allocation permit holder.

(A) The ex-vessel value for each pound of tilefish landed by an IFQ allocation permit holder shall be determined from Northeast Federal dealer reports submitted to NMFS, which include the price per pound paid to the vessel at the time of dealer purchase.

(B) The cost recovery fee percentage shall not exceed 3 percent of the total value of tilefish landings, as required under section 304(d)(2)(B) of the Magnuson-Stevens Act.

(3) Fee payment procedure. NMFS will create an annual IFQ allocation bill for each cost recovery billing period and provide it to IFQ allocation permit holders with quota share. The bill will include information regarding the amount and value of IFQ allocation landed during the prior cost recovery billing period, and the associated cost recovery fees.

(i) Payment due date. An IFQ allocation permit holder who has incurred a cost recovery fee must pay the fee to NMFS within 45 days of the date of the bill.

(ii) Payment submission method. Cost recovery payments shall be made electronically via the Federal Web portal, www.pay.gov, or other Internet sites designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the cost recovery fee bill. Electronic payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Alternatively, payment by check may be authorized by Regional Administrator if he/she determines that electronic payment is not practicable.

(4) Payment compliance. If an IFQ allocation permit holder does not submit full payment by the due date described in paragraph (h)(3)(i) of this section, the Regional Administrator may:

(i) At any time thereafter, notify the IFQ allocation permit holder in writing that his/her IFQ allocation permit is suspended, thereby prohibiting landings of tilefish above the incidental limit, as specified at § 648.295.

(ii) Disapprove any transfer of annual tilefish allocation or quota share to or from the IFQ allocation permit holder as described in paragraph (e)(4)(iii) of this section, until such time as the amount due is paid.

(iii) Deny renewal of the IFQ allocation permit if it had not yet been issued for the current year, or deny renewal of the IFQ allocation permit for the following year.

(iv) If the fee amount is not appealed, the Regional Administrator may issue a Final Administrative Determination (FAD) as described in paragraph (h)(5) of this section, based upon available information.

(5) Appeal of IFQ fee amount. If a tilefish IFQ allocation permit holder disagrees with the fee amount determined by NMFS, he/she may appeal the cost recovery bill.

(i) IFQ fee appeals must be submitted to NMFS in writing before the due date described in paragraph (h)(3)(i) of this section.

(ii) The IFQ allocation permit holder shall have the burden of demonstrating that the fee amount calculated by NMFS is incorrect and what the correct amount is.

(iii) If a request to appeal is submitted on time, the Regional Administrator shall notify the IFQ allocation permit holder in writing, acknowledging the appeal and providing 30 days to submit any additional relevant documentation supporting an alternative fee amount.

(iv) While the IFQ fee is under appeal and the tilefish IFQ allocation permit is suspended, as described in paragraph (h)(4) of this section, the IFQ allocation permit holder may request a Letter of Authorization to fish until the appeal is concluded. Any tilefish landed pursuant to the above authorization will count against the IFQ allocation permit, if issued.

(v) Final Administrative Determination (FAD). Based on a review of available information, including any documentation submitted by the IFQ allocation permit holder in support of the appropriateness of a different fee amount, the Regional Administrator shall determine whether there is a reasonable basis upon which to conclude that an alternate fee amount is correct. This determination shall be set forth in a FAD that is signed by the Regional Administrator. A FAD shall be the final decision of the Department of Commerce.

(A) The IFQ allocation permit holder shall have 30 days from the date of the FAD to comply with the terms of the FAD.

(B) If the IFQ allocation permit holder does not comply with the terms of the FAD within this period, the Regional Administrator shall:

(1) Refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection; and

(2) Cancel any Letter of Authorization to fish that had been issued during the appeal.

(vi) If NMFS does not receive full payment of an IFQ cost recovery fee prior to the end of the cost recovery billing period immediately following the one for which the fee was incurred, the subject IFQ allocation permit and any associated IFQ quota share shall be deemed to have been voluntarily relinquished pursuant to paragraph (b)(8) of this section.

(6) Annual cost recovery report. NMFS will publish annually a report on the status of the tilefish IFQ cost recovery program. The report will provide details of the costs incurred by NMFS for the management, enforcement, and data collection and analysis associated with the tilefish IFQ program during the prior cost recovery billing period, and other relevant information at the discretion of the Regional Administrator.

(i) Periodic review of the IFQ program. A formal review of the IFQ program must be conducted by the MAFMC within 5 years of the effective date of the final regulations. Thereafter, it shall be incorporated into every scheduled MAFMC review of the FMP (i.e., future amendments or frameworks), but no less frequently than every 7 years.

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