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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140822715-4715-01]

RIN 0648-BE37

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish Fishery; 2015-2017 Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the commercial tilefish fishery for the 2015, 2016, and 2017 fishing years. This action would set the acceptable biological catch, annual catch limit, total allowable landings, and harvest allocations for the individual fishing quota and incidental fishery components of the commercial tilefish fishery. The intent of this action is to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan.

DATES: Comments must be received by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0103, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-

Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0103, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- Mail: John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Tilefish Specifications.”

Instructions: All comments received are part of the public record and will generally be posted to www.regulations.gov without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment (EA) and Initial Regulatory Flexibility Analysis (IRFA) are available upon request from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The specifications document is also accessible via the Internet at:

www.greateratlantic.fisheries.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978-281-9341.

SUPPLEMENTARY INFORMATION: Regulations implementing the Tilefish Fishery Management Plan (FMP) appear at 50 CFR part 648, subparts A and N. The FMP (section 1.2.1.2) states that, after a “benchmark” stock assessment, conducted at the Northeast Fisheries

Science Center (NEFSC) sponsored stock assessment workshop (SAW), and subsequent review by the stock assessment review committee (SARC), from which the biological reference points for tilefish could change, a change to the quota may be warranted. The 58th SAW met in December 2013, assessed the tilefish stock using updated information and a new analytical model, and concluded that the stock is not overfished and overfishing is not occurring. Fishing mortality (F) was estimated to be 74 percent of the F that allows maximum sustainable yield (F_{MSY}). Spawning stock biomass (SSB) was estimated to be 101 percent of SSB_{MSY} . The stock assessment was reviewed and accepted by the SARC in January 2014. Based on the results of this assessment, NMFS has determined that the tilefish stock has been rebuilt.

The Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee (SSC) met in March 2014 to review the assessment results and other available scientific information and make recommendations for an overfishing limit (OFL) and acceptable biological catch (ABC) for up to a 3-year period. The SSC accepted the new stock assessment model, and identified the tilefish assessment as Level 3 under the Council's tiered ABC control rule structure. The previous stock assessment had been considered Level 4. The change in assessment level led the SSC to apply a different requirement of the Council's risk policy for setting ABC relative to the OFL. This change resulted in a lower recommended ABC, and therefore a lower harvest quota, than has been used in this fishery since 2001.

The Council's Tilefish Monitoring Committee met to consider the SSC's recommendations as well as additional information about the fishery, including recent average estimated discards of tilefish, to recommend annual catch limit (ACL), annual catch target (ACT), and total allowable landings (TAL) for the same 3-year time period. The Monitoring Committee recommended for each of the three years that the ACL and ACT be set equal to the

ABC. In determining a recommended TAL, the Monitoring Committee incorporated a deduction of 5 mt from the ACT to account for discards of tilefish across all fisheries. This amount represents the recent average discards calculated from observer data.

The Council met on April 9, 2014, to consider the SSC’s and Monitoring Committee’s recommendations, receive public comments, and to formalize recommendations to NMFS for the 2015-2017 catch limit specifications, management measures, and research set-aside amounts.

The Council’s quota recommendations are listed in Table 1.

Table 1. Current tilefish harvest limits for 2014 relative to proposed specifications for 2015, 2016, and 2017.

	2014	2015	2016	2017
Overfishing Limit (OFL)	NA	989 mt	1,063 mt	1,091 mt
Acceptable Biological Catch (ABC)	913 mt	801 mt	861 mt	861 mt
Annual Catch Limit (ACL)	913 mt	801 mt	861 mt	861 mt
Total Allowable Landings (TAL)	905 mt	796 mt	856 mt	856 mt
Individual Fishing Quota (IFQ) Fishery ¹	1,895,250 lb (859,671 kg)	1,667,136 lb (756,200 kg)	1,792,799 lb (813,200 kg)	1,792,799 lb (813,200 kg)
Incidental Fishery ¹	99,750 lb (45,246 kg)	87,744 lb (39,800 kg)	94,357 lb (42,800 kg)	94,357 lb (42,800 kg)

¹ Kg are converted from lb, and may not necessarily add exactly due to rounding.

The Council recommended the same quota for 2017 as proposed for 2016, because, even though stock assessment projections indicate that the quota could be increased slightly, the Tilefish FMP has used a constant landings management strategy since it was implemented in 2001. The tilefish industry has been supportive of this approach, and stated they benefit from the predictability that a stable quota provides. At the urging of the tilefish industry, and because the lower harvest in 2017 would likely support further growth in this stock, the Council decided that the value of quota stability between 2016 and 2017 outweighed the potential gain from the small amount of quota increase that could have been realized in 2017. As in previous years, the

Council opted not to allocate any tilefish quota for research set-aside. If these recommended quotas are implemented, the Council would have the opportunity to review updated information on the status of the tilefish fishery each year, and may choose to recommend changes to these specifications before the 2016 or 2017 fishing years.

The regulation at § 648.292(b)(1) specifies that the TAL for each fishing year will be 1.995 million lb (905,172 kg), unless modified by the specifications process. This default value in the regulations may become confusing, because this action is proposing different TALs for 2015, 2016, and 2017 that would not appear in the regulations. To avoid confusion this action would revise the regulations to remove this reference to a specific TAL value.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Council prepared a draft EA for this action that analyzes the impacts of this proposed rule. A copy of the draft EA is available from the Federal e-Rulemaking portal www.regulations.gov. Type “NOAA-NMFS-2014-0103” in the Enter Keyword or ID field and click search. A copy of the EA is also available upon request from the Council (see ADDRESSES).

The Council prepared an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA), which is included in the EA for this action

and supplemented by information contained in the preamble of this proposed rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY of the proposed rule. A summary of the analysis follows. A copy of this analysis is available from the Council (see ADDRESSES).

The Small Business Administration (SBA) defines a small business in the commercial harvesting sector as a firm with receipts (gross revenues) of up to \$20.5 million for finfish businesses. A small business in the recreational fishery (i.e., party or charter vessel operations) is a firm with receipts of up to \$7.5 million. The proposed measures regarding the 2015, 2016, and 2017 tilefish quotas could affect any vessel holding an active Federal permit for tilefish. Vessel permit data shows that in 2013 there were 1,827 vessels that held a valid commercial tilefish permit and 393 vessels held a valid party/charter tilefish permit. However, not all of those vessels are active participants in the fishery. According to dealer-reported landings data, 141 vessels landed tilefish in fishing year 2013. In addition, according to vessel trip report data, 25 party/charter vessels reported catching tilefish in 2013.

Some of the vessels with tilefish permits may be considered to be part of the same firm because they may have the same owners. Firms are classified as finfish or for-hire firms based on the activity from which they derive the most revenue. All of the party/charter firms fall within the definition of a small business according to the 2010-2012 average revenues; however some of these firms also landed tilefish commercially. If the contribution of tilefish commercial receipts is more than 50 percent of the total, the party/charter firm is considered a commercial operation. Using the \$20.5 million cutoff for commercial finfish firms, there are 190 firms that

are small and 4 that are large assuming average revenues for the 2010-2012 period. The majority of the permitted vessels readily fall within the definition of small business.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, NMFS is not aware of any relevant Federal rule that may duplicate, overlap, or conflict with this proposed rule.

In general terms, the active tilefish fishery participants derive a small share of gross receipts from the tilefish fishery. However, for small entities generating on average \$10,000 or more of their total revenues from tilefish revenues, a large number of the active participants generate a large share of gross receipts from the tilefish fishery. The category of small entities likely to be affected by the proposed actions is that of IFQ shareholders and fishermen in the commercial fishery. The overall commercial tilefish quota is allocated to IFQ shareholders, which are allocated 95 percent of the overall quota and incidental fishery vessels which are allocated 5 percent of the overall quota. IFQ vessels directly target tilefish using bottom longline gear, and incidental vessels land tilefish incidentally when targeting other species. Most of the incidental landings occur with bottom trawl gear. However, for the incidental fishery, changes in quotas are not expected to affect the effort of vessels that land tilefish incidentally (e.g., otter trawl vessels) as the catch and/or landings of tilefish incidentally occur as these vessels target other species and their fishing behavior is not expected to be driven by the level of the incidental tilefish quota.

The IRFA addressed three alternatives (including a no action/status quo alternative) for the 2015, 2016, and 2017 tilefish fishing years. All quota alternatives considered in this analysis are based on various commercial harvest levels for tilefish. Procedurally, the economic effects of the quota alternatives were estimated using four steps. First, the dealer-reported landings data

were queried to identify all vessels that landed at least one pound of tilefish in fishing year 2013 (November 1, 2012 - October 31, 2013). The second step was to estimate total revenues from all species landed by each vessel during fishing year 2013. This estimate provides the basis from which subsequent quota changes and their associated effects on vessel revenues were compared.

The third step was to deduct or add, as appropriate, the expected change in vessel revenues depending upon which of the quota scenarios were evaluated. This was accomplished by estimating proportional reductions or increases in the quota scenarios for 2015 versus the base quota year 2013. For 2016 and 2017, proportional reductions between the 2016-2017 measures and the status quo (no action) alternative for 2016-2017 were used to assess revenue changes. For the purpose of estimating the 2015, 2016, and 2017 quotas and revenue changes, the following assumptions were made: a) the industry will fully harvest, and not exceed, the 2014 quota; and b) the entire tilefish quota allocations will be taken in 2015, 2016, and 2017. The fourth step was to compare the estimated 2015, 2016, and 2017 base revenues for every vessel to assess potential changes.

The proposed action (Alternative 1) would set commercial tilefish quotas for 2015, 2016, and 2017 at 1.755 million lb (796 mt), 1.887 million lb (856 mt), and 1.887 million lb (856 mt), respectively. Under Alternative 1 for 2015-2017, it is expected that the number of vessels impacted by revenue losses on the order of 5 percent or less (relative to the status quo) would range from 134 (in year 2015) to 138 (in each year 2016 and 2017). In addition, it is expected that that the number of vessels impacted by revenue losses on the order of 5 percent or more would range from 7 (in year 2015) to 3 (in each year 2016 and 2017). All vessels with revenue reduction of 5 percent or greater are from New Jersey and/or New York, with the largest number of impacted vessels homeported in Suffolk County, NY.

Overall, it is expected that Alternative 1 for 2015-2017 would result in a combined decrease in revenue of \$1,567,979 relative to the status quo quota for 2015-2017. Because the overall dependence on tilefish for most of the vessels projected to incur revenue losses is small (83 to 97 percent of the vessels), it is expected that the potential decrease in revenue stated above would more greatly affect the 11 vessels that are more dependent on tilefish (i.e., IFQ vessels) than the vessels that incidentally catch tilefish. On average, each IFQ vessel that landed tilefish during fishing year 2013 (11 vessels) would incur a total reduction in revenues of \$135,416 under Alternative 1 over the 3-year period, when compared to the status quo alternative for 2015-2017; and each incidental vessel (130 vessels) would incur a \$603 reduction in revenues over the same 3-year period.

Alternative 2 is the status quo alternative, and contains commercial quotas of 1.995 million lb (905 mt) for tilefish for each 2015, 2016, and 2017. Under this alternative, the tilefish specifications would result in no change in commercial landings when compared to current conditions. Therefore, commercial landings for tilefish would be expected to be the same relative to 2014 quota. As such, it is not expected that revenue changes would occur under this alternative when compared to existing conditions.

Alternative 3 would set commercial tilefish quotas for 2015, 2016, and 2017 at 1.755 million lb (796 mt), 1.887 million lb (856 mt), and 1.938 million lb (879 mt), respectively. Under Alternative 3 for 2015-2017, it is expected that the number of vessels impacted by revenue losses on the order of 5 percent or less (relative to the status quo) would range from 138 (in year 2016) to 141 (in 2017). In addition, it is expected that that the number of vessels impacted by revenue losses on the order of 5 percent or more would range from 7 (in year 2015) to 3 (in year 2016; no vessels were projected to incur revenue losses of 5 percent or more in

2017). All vessels with revenue reduction of 5 percent or greater are from New Jersey and/or New York, with the largest number of impacted vessels homeported in Suffolk County, NY.

Overall, it is expected that Alternative 3 for 2015-2017 would result in a combined decrease in revenue of \$1,393,547 relative to the status quo quota for 2015-2017. Because the overall dependence on tilefish for most of the vessels projected to incur revenue losses is small, it is expected that the potential decrease in revenue stated above would more greatly affect the 11 vessels that are more dependent on tilefish (i.e., IFQ vessels) than the vessels that incidentally catch tilefish. On average, each IFQ vessel that landed tilefish during fishing year 2013 (11 vessels) would incur a total reduction in revenues of \$120,352 under Alternative 3 over the 3-year period, when compared to the status quo alternative for 2015-2017; and each incidental vessel (130 vessels) would incur a \$536 reduction in revenues over the same 3-year period.

For both Alternative 1 and Alternative 3 projected changes in ex-vessel gross revenues associated with the quotas in 2015-2017 relative to the status quo are based on assumed static prices for tilefish. However, it is possible that given the potential decrease in landings for tilefish, the price for this species may increase, holding all other factors constant. If this occurs, an increase in the price for tilefish may mitigate some of the revenue losses associated with lower quantity of tilefish quota availability.

The Council recommended Alternative 1 for 2015, 2016, and 2017, over Alternatives 2 and 3 because it is projected to prevent overfishing in 2015 and 2016, while allowing quota stability between 2016 and 2017, which the tilefish industry considers important in order to promote stability in price and supply in the marketplace. Alternative 2 was not recommended by the Council because it would exceed the catch level recommendations of the Council's SSC, and would therefore be inconsistent with the requirements of the Magnuson-Stevens Act. Alternative

3 was not selected because it would not support the consistency of quota/landings from year to year that the tilefish industry considers important to maintaining price and supply stability in this fishery.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 27, 2014.

Eileen Sobeck,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.292, revise paragraph (b) to read as follows:

§ 648.292 Tilefish specifications.

(b) TAL. (1) The TAL for each fishing year will be specified pursuant to paragraph (a) of this section.

(2) The sum of the TAL and the estimated discards shall be less than or equal to the ACT.

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