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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 181022971-8999-02]

RIN 0648-BI57

Fisheries of the Northeastern United States; Mid-Atlantic Blueline Tilefish Fishery; 2019 and Projected 2020-2021 Specifications

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

ACTION: Final rule.

SUMMARY: NMFS finalizes specifications for the 2019 Mid-Atlantic blueline tilefish fishery north of the North Carolina/Virginia border and projects specifications for 2020 and 2021. This action is necessary 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. It is also intended to inform the public of these specifications for the 2019 fishing year and projected specifications for 2020-2021.

DATES: This rule is effective [*insert date of publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of the environmental assessment are available on request from the Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901.

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

SUPPLEMENTARY INFORMATION:

Background

The blueline tilefish fishery north of the North Carolina/Virginia border is managed by the Mid-Atlantic Fishery Management Council under the Tilefish Fishery Management Plan (FMP). The blueline tilefish fishery south of the North Carolina/Virginia border is managed by the South Atlantic Fishery Management Council under the Snapper-Grouper FMP. Regulations implementing the Tilefish FMP appear at 50 CFR part 648, subparts A and N. The FMP and its implementing regulations detail the Council’s process for establishing specifications. Fishery specifications for blueline tilefish include catch and landing limits for the commercial and recreational fisheries.

Detailed background information regarding the development of the 2019-2021 specifications for this fishery was provided in the specifications proposed rule (November 19, 2018; 83 FR 58219). That information is not repeated here.

2019 and Projected 2020-2021 Specifications

Table 1 shows the 2019 and projected 2020-2021 specifications including the acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), and total allowable catch (TAL) for the commercial and recreational aspects of the Mid-Atlantic blueline tilefish fishery. NMFS will publish a notice in the **Federal Register** before the 2020 and 2021 fishing years notifying the public of the final specifications for each year.

Table 1. 2018, 2019, and Projected 2020-2021 Blueline Tilefish Specifications

	2018	2019	Projected 2020-2021
ABC – North of NC/VA line	87,031 lb (39.5 mt)	100,520 lb (45.6 mt)	100,520 lb (45.6 mt)

Recreational ACL / ACT	63,533 (28.8 mt)	73,380 (33.3 mt)	73,380 (33.3 mt)
Commercial ACL / ACT	23,498 lb (10.6 mt)	27,140 lb (12.3 mt)	27,140 lb (12.3 mt)
Recreational TAL	62,262 lb (28.2 mt)	71,912 lb (32.6 mt)	71,912 lb (32.6 mt)
Commercial TAL	23,263 lb (10.5 mt)	26,869 lb (12.2 mt)	26,869 lb (12.2 mt)

This action increases the commercial possession limit from 300 lb (136 kg) to 500 lb (227 kg) per-trip to assist the commercial fishery in harvesting the commercial TAL. To prevent the commercial TAL from being landed too quickly the Regional Administrator may reduce the possession limit to 300 lb (136 kg) per trip when 70 percent of the commercial TAL has been landed.

This action makes no change to the recreational fishery beyond the increase to the recreational TAL (Table 1). The recreational fishery is open from May 1 through October 31 of each year and closed from November 1 through April 30. The bag limit for blueline tilefish depends on the type of fishing vessel being used. On a private boat, each angler may keep up to three blueline tilefish. On uninspected for-hire vessels (charter boats), each angler may keep up to five blueline tilefish. On U.S. Coast Guard-inspected for-hire vessels (party boats), each angler may keep up to seven blueline tilefish.

Comments

The public comment period for the proposed rule ended on December 4, 2018. We received one comment on the proposed rule.

Comment: The commenter opposed the increase in the commercial possession limit and

recommended a drastic cut in harvest quotas or risk the species going extinct.

Response: In 2017 and 2018, while operating under a 300 lb (136 kg) possession limit, the commercial blueline tilefish fishery did not exceed the commercial TAL. Analysis conducted by the Mid-Atlantic Council indicates the 500 lb (227 kg) possession limit would not result in exceeding the new, higher commercial TAL. If commercial harvest nears the TAL, the Regional Administrator has the authority to reduce the possession limit to slow harvest rates and to close the fishery if the TAL is landed. The commenter presented no clear rationale or evidence supporting the claim that the harvest quotas would result in extinction of the species. The Council's recommended harvest quotas were set based on the results of a scientifically peer-reviewed stock assessment. NMFS used the best scientific information available when assessing the potential environmental impacts of this action and is approving specifications for the Mid-Atlantic blueline tilefish fishery that are consistent with the FMP, all applicable legal requirements, and the recommendations of the Council.

Changes from Proposed to Final Rule

This final rule adds regulatory text to 50 CFR 648.14(u) and 648.296(b) establishing the recreational blueline tilefish fishing season that was inadvertently omitted from a November 15, 2017, final rule (82 FR 52851). In Amendment 6 to the Tilefish FMP, the Council recommended the recreational blueline tilefish fishery be open from May 1 through October 31 and closed November 1 through April 30 each year. The proposed rule (82 FR 29263; June 28, 2017) and final rule for that action both clearly described the recreational fishing season in the preamble, but neglected to include the measure in the regulatory text. The Amendment 6 final rule clearly intended to implement the recreational closure, and included formal responses to public comments regarding the closure. The recreational season was also included in our public

outreach material about the amendment.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness provision of the Administrative Procedure Act for these specifications. This action will increase the annual total allowable landings for the commercial and recreational fisheries by 15 percent and will increase the commercial possession limit from 300 lb (136 kg) to 500 lb (227 kg) per trip. It would be unnecessary and contrary to the public interest to provide for prior notice and an opportunity for public comment for the implementation of the blueline tilefish recreational season. The Tilefish Amendment 6 proposed rule (82 FR 29263; June 28, 2017) described the recreational fishing season in the preamble and solicited public comment. The November 15, 2017, final rule (82 FR 52851) included our response to public comments on the measure, and stated the season would be implemented as proposed. Seeking additional public comment at this point would be unlikely to provide new insight and would further delay final implementation of the recreational season. Similarly, the need to implement this measure in a timely manner to avoid fishing during a period we had previously announced the fishery would be closed constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date. A delay in the effective date of the recreational season would seemingly conflict with the November 15, 2017, final rule and would cause confusion among the public about whether or not the blueline tilefish

recreational fishery is open.

This 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 this 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.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 6, 2019.

Samuel D. Rauch III,

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 § 648.14, paragraph (u)(2)(x) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(u) * * *

(2) * * *

(x) Engage in recreational fishing for blueline tilefish outside of the recreational open season specified at § 648.296(b).

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3. In § 648.295, paragraphs (b)(1) and (2) are revised to read as follows:

§ 648.295 Tilefish commercial trip limits and landing condition.

* * * * *

(b) * * *

(1) *Commercial possession limit.* Any vessel of the United States fishing under a tilefish permit, as described at § 648.4(a)(12), is prohibited from possessing more than 500 lb (227 kg) of gutted blueline tilefish per trip in or from the Tilefish Management Unit.

(2) *In-season adjustment of possession limit.* The Regional Administrator will monitor the harvest of the blueline tilefish commercial TAL based on dealer reports and other available information.

(i) When 70 percent of the blueline tilefish commercial TAL will be landed, the Regional Administrator may publish a notice in the **Federal Register** notifying vessel and dealer permit holders that, effective upon a specific date, the blueline tilefish commercial possession limit is reduced to 300 lb (136 kg) of gutted blueline tilefish per trip in or from the Tilefish Management Unit.

(ii) When 100 percent of the blueline tilefish commercial TAL will be landed, the

Regional Administrator will publish a notice in the **Federal Register** notifying vessel and dealer permit holders that, effective upon a specific date, the blueline tilefish commercial fishery is closed for the remainder of the fishing year. No vessel may retain or land blueline tilefish in or from the Tilefish Management Unit after the announced closure date.

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4. In § 648.296, paragraph (b) introductory text is added to read as follows:

§ 648.296 Tilefish recreational possession limits and gear restrictions.

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(b) * * * The recreational blueline tilefish fishery is open May 1 through October 31, and closed November 1 through April 30.

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