

## Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30-day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone

and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the Federal Register processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

**Authority:** 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: January 6, 2006.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 010319075-1217-02; I.D. 122905B]

#### Fisheries of the Northeastern United States; Tilefish Fishery; Adjustment to the Fishing Year 2006 Tilefish Full-time Tier 1 Permit Category Commercial Quota

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

**ACTION:** Temporary rule; commercial quota adjustment.

**SUMMARY:** NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) has determined that the quota for the tilefish Full-time Tier 1 permit category has been exceeded for fishing year (FY) 2005, requiring an adjustment of the Full-time Tier 1 permit category quota for FY 2006. This action complies with the Fishery Management Plan for the Tilefish Fishery (FMP) and is intended to continue the rebuilding program in the FMP by taking into account previous overages of the tilefish quota.

**DATES:** Effective February 13, 2006, through October 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Brian R. Hooker, Fishery Policy Analyst, (978) 281-9220.

**SUPPLEMENTARY INFORMATION:** The regulations at 50 CFR 648.290(c) state that any overages of the quota for any tilefish limited access permit category that occur in a given fishing year will be subtracted from the quota for that category in the following fishing year. This section also specifies that, if an adjustment is required, a notification of adjustment of the quota will be published in the **Federal Register**.

The tilefish quota of 1,250,865 lb (567,383 kg) for the limited access Full-time Tier 1 permit category (Category A) is adjusted for FY 2006 through this action. Based upon vessel reports and other information available as of December 1, 2005, FY 2005 tilefish landings for Category A were 1,251,058

lb (567,471 kg). Therefore, an overage of 193 lb (88 kg) is being deducted from the FY 2006 Category A quota through this action, which results in an adjusted quota, rounded to the nearest whole pound, of 1,250,672 lb (567,295 kg) for FY 2006.

The other tilefish permit categories did not exceed their respective quotas in FY 2005. Therefore, the quotas and trip limits associated with these permit categories do not need to be adjusted. The quotas for the Full-time Tier 2 and Part-time permit categories remain 284,288 lb (128,951 kg) and 360,098 lb

(163,338 kg), respectively, and the Incidental catch trip limit is 300 lb (136 kg) for FY 2006.

The FY 2005 tilefish Full-time Tier 1 permit category quota, as well as landings, and the resulting overage for this permit category are presented in Table 1.

TABLE 1. TILEFISH FULL-TIME TIER 1 CATEGORY FY 2005 LANDINGS AND OVERAGE

Permit Category	2005 Quota		2005 Landings		2005 Overage	
	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
Full-time Tier 1	1,250,865	567,383	1,251,058	567,471	193	88

<sup>1</sup>Kilograms are as converted from pounds, and may not necessarily add due to rounding.

The resulting adjusted FY 2006 tilefish Full-time Tier 1 permit category commercial quota is presented in Table 2.

TABLE 2. TILEFISH FULL-TIME TIER 1 CATEGORY ADJUSTED FY 2006 QUOTA

Permit Category	2006 Initial Quota		2006 Adjusted Quota	
	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
Full-time Tier 1	1,250,865	567,383	1,250,672	567,295

<sup>1</sup>Kilograms are as converted from pounds, and may not necessarily add due to rounding.

### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment as notice and comment would be impracticable and unnecessary. The regulations under § 648.290(c) requires the Regional Administrator to subtract any overage of the quota for any tilefish limited access category from the quota for that category in the following fishing

year. Accordingly, the action being taken by this temporary rule is non-discretionary. There is no discretion to modify this action based on public comment at this time.

The rate of harvest of tilefish by the Full-time Tier 1 Category is updated weekly on the internet at <http://www.nero.noaa.gov>. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action as a result of a tilefish quota being exceeded during the 2005 fishing year. Further, the potential for this action was considered

and open to public comment during the development of the tilefish fishery management plan. Therefore, any negative effect the waiving of public comment may have on the public is mitigated by these factors.

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

Dated: January 6, 2006.

**John H. Dunnigan**

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

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