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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071220873-7862-01]

RIN 0648-AS25

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish; Amendment 1

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 1 to the Tilefish Fishery Management Plan (FMP). The proposed measures are intended to address issues and problems that have been identified since the FMP was first implemented. These measures are intended to achieve the management objectives of the FMP, and include measures to implement an Individual Fishing Quota (IFQ) program.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on July 2, 2009.

ADDRESSES: You may submit comments, identified by 0648-AS25, by any one of the following methods:

- Mail: Regional Administrator, Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930-2298. Mark on the outside of the envelope, "Comments on Tilefish Amendment 1 Proposed Rule."
- Fax: (978) 281-9135.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Instructions: All comments received are a part of the public record and will generally be posted to <http://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 (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

Copies of supporting documents, including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. A copy of the RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Timothy A. Cardiasmenos, Fishery Policy Analyst, 978-281-9204.

SUPPLEMENTARY INFORMATION:

Background

In March 2004, the Mid-Atlantic Fishery Management Council (Council) began development of Amendment 1 to the FMP to evaluate alternatives for a limited access privilege program (LAPP) and other measures for limited access tilefish vessels. The Council held 17 public meetings on Amendment 1 between March 2004 and April 2008. After considering a wide range of issues, alternatives, and public input, the Council submitted a draft environmental impact statement (DEIS) for Amendment 1 to NMFS. The Notice of Availability (NOA) for the DEIS published in the **Federal Register** on December 28, 2007 (72 FR 73798). Following the public comment period that ended February 11, 2008, the Council adopted Amendment 1 on April 10, 2008. Amendment 1 was developed and adopted by the Council consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law. Amendment 1 management measures were developed by the Council to: (1) Implement an IFQ program; (2) establish IFQ transferability of ownership; (3) establish a cap on the acquisition of IFQ allocation (temporary and permanent); (4) address fees and cost-recovery; (5) establish flexibility to revise/adjust the IFQ program; (6) establish IFQ reporting

requirements; (7) modify the Interactive Voice Response (IVR) reporting requirements; (8) implement recreational permits and reporting requirements; (9) improve monitoring of tilefish commercial landings; (10) expand the list of management measures that can be adjusted via the framework adjustment process; (11) modify the Essential Fish Habitat (EFH) designation; (12) modify the habitat areas of particular concern (HAPC) designation; and (13) implement measures to reduce gear impacts on EFH within the Exclusive Economic Zone (EEZ). The proposed IFQ program measures are intended to reduce overcapacity in the commercial fishery, and to eliminate, to the extent possible, problems associated with a derby-style fishery. Amendment 1 also proposes to create a tilefish Charter/Party permit, which would require reporting from owners or operators of vessels that take fishermen for hire. When the original FMP was implemented in 2001, the recreational component of the fishery was believed to be small. However, anecdotal evidence suggests, that in recent years, the recreational component of the fishery may have grown. The tilefish open access Charter/Party permit would provide NMFS with the ability to collect landings information on this component of the fishery in order to properly assess the health of the stock.

Proposed Measures

The measures proposed in this rule are based on the description of the measures in Amendment 1. NMFS has noted instances where it has interpreted the language in Amendment 1 to account for any missing details in the Council's description of the proposed measures. NMFS seeks comments on all of the measures in this proposed rule, particularly those that, where noted, involve an interpretation of Council intent.

Institution of an IFQ Program in the Tilefish Fishery

Amendment 1 proposes that a qualified vessel owner must obtain a valid tilefish IFQ Allocation permit to possess or land tilefish in excess of an incidental catch limit of tilefish (see below). In addition, any vessel owner would be required to possess, and carry on board, a valid tilefish vessel permit to fish for, possess, or land tilefish in or from the Tilefish Management Unit. An incidental catch of 300 lb (136 kg) of tilefish, per trip, could be landed by any vessel issued a tilefish vessel permit, other than a Charter/Party vessel permit, not fishing under a tilefish IFQ

Allocation permit. All permits issued to current limited access vessels (i.e., all Full-time and Part-time vessels) would be automatically converted to tilefish open access permits and issued to the permit holder of record prior to the effective date of the final regulations. In addition, current holders of tilefish limited access permits would be issued a tilefish IFQ Allocation permit if they meet the proposed Amendment 1 qualification criteria (see item B below). IFQ Allocation permit holders would be required to declare all vessel(s) that they own, or lease, that will land their IFQ allocation, by providing a list to NMFS at the beginning of each fishing year (prior to receiving their IFQ Allocation permit).

A. Initial IFQ Allocation Permit Application

NMFS would notify all vessel owners, for whom NMFS has data available, whose vessel(s) meet(s) the qualification criteria described below. Applications for initial tilefish IFQ Allocation permits must be submitted to NMFS no later than 6 months after the effective date of the final regulations.

B. Qualifying Criteria

Amendment 1 specifies the landings and permit history criteria that must be met to qualify for a tilefish IFQ Allocation permit. Under Amendment 1, an individual would be eligible to be issued a tilefish IFQ Allocation permit if he/she owned a vessel that was issued a valid tilefish limited access permit for the 2005 permit year, or if the individual currently holds a valid Confirmation of Permit History (CPH) for the fishing history associated with that vessel (see Item C below for further detail regarding CPH vessels). Vessel owners that meet this permit requirement, and that held, unless otherwise listed under item C, a 2005 tilefish Full-time limited access permit (Category A or B), would be eligible to receive an IFQ allocation based on their average landings for the 2001 through 2005 calendar years. These landings would be used to assign the IFQ allocations to each vessel under the IFQ program by dividing a vessel's landings by the total landings within their respective Category for the 2001 through 2005 calendar years (Category A (i.e., Tier 1, which is allocated 66 percent of the adjusted total allowable landings (TAL)) or Category B (i.e., Tier 2, which is allocated 15 percent of the adjusted TAL)) to derive a percentage. This percentage would then be applied to the adjusted TAL to derive an IFQ allocation percentage. This percentage would be converted to a specific

number of pounds. For example, a Category A vessel that landed 20 percent of the average landings within Category A would receive an IFQ allocation equal to 20 percent of 66 percent of the adjusted TAL ($0.2 \times 0.66 \times 1,895,250 \text{ lb}$ (859,671 kg) = 250,173 lb (113,476 kg)), which is equal to 13.2 percent of the adjusted TAL. Vessel owners that meet the above permit requirement, and that held, unless listed under item C, a 2005 tilefish Part-time limited access permit (i.e., Category C, which is allocated 19 percent of the adjusted TAL), would be eligible to receive an IFQ allocation by dividing the percentage of the adjusted TAL allocated to Category C among those vessels that had landings over the 2001–2005 period to derive a percentage. This percentage would also be converted to pounds. For example, if 10 vessels from Category C qualified for an IFQ allocation, each vessel owner would receive an IFQ allocation equal to 19 percent of the adjusted TAL divided by 10 ($0.19 / 10 = 0.019$), or 1.9 percent of the adjusted TAL, which is equal to 36,010 lb (16,334 kg). Landings data would be based on NMFS dealer data for 2001, and NMFS IVR data for 2002–2005. For additional information, see item D (Appeal Permit Denial). In order to qualify for an IFQ Allocation, the owner of a vessel issued a valid limited access permit during the 2005 permit year must have average landings, from the 2001–2005 period, that constitute at least 0.5 percent of the quota for the Category for which it was permitted.

C. CPH

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, is required to have applied for and received a CPH during the 2005 permit year, if the applicant intends to maintain eligibility for a tilefish IFQ Allocation permit. The CPH provides a benefit to a vessel owner by securing limited access eligibility through a registration system when the individual does not currently own a vessel for the reasons outlined above. Under Amendment 1, a tilefish IFQ Allocation permit would be issued to an individual who owns the history of a vessel that was in CPH during the 2005 permit year, and its IFQ allocation would be determined by the limited access permit that was placed into CPH, provided it meets the respective qualification criteria for that permit as specified in item B above. As with any IFQ allocation, IFQ associated with a CPH could be transferred. IFQ associated with a CPH would count towards an

individual's overall interest held in an IFQ allocation, and would be restricted under the proposed 49-percent cap on the acquisition of IFQ.

D. Appeal Permit Denial

Amendment 1 specifies an appeals process for applicants who have been denied a tilefish IFQ Allocation permit. Such applicants would be able to appeal in writing to the NMFS Northeast Regional Administrator (RA). Under this amendment, appeals would be based on the grounds that the information used by the RA in denying the permit was incorrect. The only items subject to appeal under this IFQ program would be initial eligibility for IFQ allocations based on ownership of a tilefish limited access permit, the accuracy of the amount of landings, and the correct assignment of landings to the permit holder. The RA would review, evaluate, and render final decisions on appeals. Amendment 1 would require appeals to be submitted to the RA postmarked no later than 30 days after a denial of an initial IFQ Allocation permit application. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal. Hardship arguments would not be considered. The appeal shall set forth the basis for the applicant's belief that the RA's decision was made in error. The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the RA. The hearing officer would make a recommendation to the RA. The RA's decision on the appeal would be the final decision of the Department of Commerce.

The final regulations instituting the original FMP were made effective on November 1, 2001. Effective that date, vessels issued a tilefish limited access permit were required to report their landings of tilefish for each fishing trip, via the NMFS IVR call-in system. Under Amendment 1, NMFS IVR landings data would be used to determine landings for years 2002 through 2005, and NMFS dealer data would be used for 2001 (excluding landings reported from May 15, 2003, through May 31, 2004, as a result of the *Hadaja v. Evans* lawsuit). As indicated above, the data used for the historical landings were based on more than one source. The Council examined the different sources of data available for each year and compared the completeness and accuracy of each source of data. The implementation of the original FMP, in November 2001, required permitted tilefish vessels to submit their landings into the IVR system. Although dealer data have

historically been used to calculate total landings for the purposes of setting an initial quota allocation, the Council decided to use IVR data beginning with 2002 landings to determine the initial tilefish IFQ Allocations.

The rationale for this decision is that: (1) Landings reported via the IVR system were being used to monitor the tilefish quota during the 2002–2005 time period; (2) there were a significant number of documented fishing trips in the IVR that were not reported in the dealer data system, particularly for Full-time Tier 1 vessels that sold predominantly to a single dealer (especially in 2004 and 2005); and (3) the Council did not believe that fishermen would have any incentive to over-report landings via the IVR system because over-reporting of landings would have caused the fishery to close early and adversely effect those who over-reported. Under Amendment 1, during the first year of the IFQ program only, the RA would reserve 15 percent of the TAL prior to initial distribution of IFQ allocations, to be used to allow vessels to fish under a letter of authorization (LOA), pending disposition of an applicant's appeal. Any portion of the 15-percent reserve remaining after the appeals process has been completed would be proportionately distributed back to the initial IFQ recipients as soon as possible that year. If resolution of appeals requires more than a 15-percent reserve, due either to the number of appeals filed, or the time needed to bring them to disposition, the allocations of all initial allocation holders would be reduced proportionately, as soon as possible that year, to accommodate a reserve in excess of the 15 percent. If any subsequent reduction is applied to an IFQ Allocation permit holder that has already fished his/her annual allocation, this further reduction would be treated as an overage in the subsequent fishing year (see Other Measures, item E). An individual whose IFQ Allocation permit application is denied would be eligible to apply for an LOA from the RA to continue to fish for tilefish, pending the resolution of his/her appeal. An LOA would only be issued to an individual that was issued a valid tilefish limited access permit for the 2008 permit year. This LOA would allow a vessel to continue to fish for tilefish. NMFS has preliminarily determined that the number of qualified individuals expected to fish under an LOA, pending an appeal, would not land a percentage of the adjusted TAL that would unreasonably diminish the allocations issued to IFQ Allocation

permit holders. However, if individuals fishing under an LOA are projected to land a portion of the adjusted TAL that NMFS determines would unreasonably diminish the allocations issued to IFQ Allocation permit holders, the RA, under authority proposed in § 648.291(d)(3), would impose a trip limit to reduce the landings of individuals fishing under an LOA.

IFQ Program Administration

A. IFQ Allocation Permit Renewal and Allocation of the Tilefish IFQ Total Allowable Landings (TAL)

In order to ensure the processing of an IFQ Allocation permit by the start of the fishing year on November 1, applicants would need to submit their application to NMFS by September 15. Applications received after September 15th may not be approved and issued in time for the beginning of the fishing year, in which case a vessel may not fish for tilefish pursuant to that permit until it is processed by NMFS and sent to the IFQ Allocation permit holder. All IFQ Allocation permits would be required to be issued on an annual basis by the last day of the fishing year for which the permit is required. Failure to renew an IFQ Allocation permit by this date would deem the permit as voluntarily relinquished, with no possibility for reissue or renewal in a subsequent year. The allocation listed on the IFQ Allocation permit would be updated to reflect the results of applicable allocation transfers (if allocation transfers are approved) and any redistribution of allocation resulting from permanent revocation of applicable permits under 15 CFR part 904. Allocation of tilefish quota would be calculated by multiplying an IFQ allocation percentage by the annual adjusted TAL. The updated IFQ Allocation permits would indicate any change in the annual commercial quota for tilefish, and any debits required as a result of prior fishing year overages (see Other Measures, item E). IFQ participants would be able to monitor the status of their allocations by contacting NMFS or by monitoring the NMFS webpage. IFQ Allocation permit holders would be responsible for keeping an accurate record of their landed IFQ allocation for the purposes of future leases and transfers, and to submit a percentage of their annual ex-vessel landings value to pay a cost-recovery fee at the conclusion of the calendar year.

B. Vessel Permit Renewal

Under this proposed rule, a vessel owner, other than the owner of a private

recreational vessel, would have to renew his/her tilefish vessel permit annually to possess either an incidental catch of tilefish, or to fish under a tilefish IFQ allocation authorized by an IFQ Allocation permit (see item A above) or a charter/party vessel permit in order to possess amounts of tilefish equal to the possession limit for anglers on board.

C. IFQ Transfers (Temporary and Permanent)

Under Amendment 1, IFQ allocations would be fully transferable among persons or entities that are permanent U.S. citizens or permanent resident aliens, or corporations eligible to own a U.S. Coast Guard documented vessel, as long as they meet the requirements under the Magnuson-Stevens Act. Tilefish IFQ Allocation permit holders would be allowed to transfer IFQ on a temporary and permanent basis by submitting an IFQ Transfer Form to NMFS. This form would contain at least the following data elements: The type of transfer; signature of both parties involved in the transfer; the cost associated with the transfer; and the amount of quota to be transferred. A temporary IFQ transfer (lease) would allow an IFQ Allocation permit holder to sell a temporary right to land tilefish in a specified amount to any other individual for the remainder of the fishing year in which the lease occurs. A permanent IFQ transfer would allow an IFQ Allocation permit holder to permanently sell his/her entire tilefish IFQ allocation, or a portion thereof. An IFQ Allocation permit holder who wishes to lease their IFQ to another individual would be responsible for ensuring that he/she has sufficient remaining allocation for that fishing year to lease. Any attempt to lease out quota in excess of an IFQ Allocation permit holder's existing quota would be denied by NMFS. Once all, or a portion of, an IFQ allocation is leased, the lessee would not be able to subsequently sub-lease that IFQ allocation. If the owner of an IFQ allocation leases additional quota from another IFQ Allocation permit holder, any landings associated with this transferred quota would be deducted before his/her base allocation, if any remains, for the purposes of calculating the cost-recovery fees, as discussed in Item D.

D. IFQ Cost-recovery

Under Section 304(d)(2)(A) of the Magnuson-Stevens Act, the Secretary of Commerce (Secretary) is authorized to collect a fee, not to exceed 3 percent of the ex-vessel value of fish harvested, to recover the costs directly related to the

management, data collection and analysis, and enforcement of IFQ programs such as the one proposed by Amendment 1. The authority and procedures for the collection of cost-recovery fees would be established in this rule. Under the Magnuson-Stevens Act, the cost-recovery fee for any IFQ that was temporarily transferred to another IFQ Allocation permit holder would be the responsibility of the owner of the permanent IFQ allocation, not the lessee. Due to the administrative burden associated with allowing a lessee to pay a cost-recovery fee for temporarily transferred IFQ, such payments are not authorized. Therefore, under Amendment 1, a tilefish IFQ Allocation permit holder with a permanent allocation would incur a cost-recovery fee that would be paid from the value of tilefish landings, authorized under his/her tilefish IFQ Allocation permit, including allocation that is landed under a temporary transfer of allocation. The RA would determine the recoverable costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program. The cost-recovery billing period would be defined as the full calendar year, beginning with the start of the first calendar year following the effective date of the final regulations implementing Amendment 1.

Prior to the first year of the IFQ program, NMFS would not have information needed to determine the recoverable costs. Therefore, during the initial cost-recovery billing period, the recoverable costs would be set at 3 percent. The recoverable costs would be divided by the amount of the adjusted TAL to derive a fee cost per pound. IFQ Allocation permit holders would be assessed a fee based on the fee cost per pound multiplied by total allocated tilefish landings, in pounds, by such permit holder. If the recoverable costs are determined to be less than 3 percent, NMFS would issue each IFQ Allocation permit holder a fee-override credit, equal to the amount paid in excess of their portion of the recoverable cost, towards their subsequent year's fee. Three percent of the total ex-vessel value of all tilefish IFQ landings during the cost-recovery billing period, as reported to NMFS from federally permitted dealers, would determine the maximum annual costs that would be recoverable in the fishery. Payment of the cost-recovery fee would be an IFQ Allocation permit condition. NMFS would mail a cost-recovery bill to each IFQ Allocation permit holder for the IFQ cost-recovery fee incurred by that IFQ Allocation permit holder for the previous cost-

recovery billing period. IFQ Allocation permit holders would be required to submit payment within 45 days of the date of the NMFS cost-recovery bill. A tilefish IFQ Allocation permit would not be renewed (i.e., not be issued), for the subsequent fishing year, by NMFS, until payment for the prior cost-recovery billing period fee is received in full. The bill for a cost-recovery fee may also be made available electronically, by NMFS, via the Internet. As described above, all IFQ Allocation permit holders would be responsible for submitting fees for all landings associated with their permanent allocation during the calendar year (not fishing year) for later submission to NMFS, to be compliant with section 304(d)(2)(B) of the Magnuson-Stevens Act. Unless otherwise specified below, if an IFQ Allocation permit holder does not pay his/her cost-recovery fee, or pays less than the full amount due, within 45 days of the date on the bill, his/her IFQ Allocation permit would not be renewed for the subsequent fishing year, and no transfers (permanent or temporary) could be made involving this IFQ.

Disputes regarding fees would be resolved through an administrative appeal procedure. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ Allocation permit holder has not paid the amount due in full, NMFS would notify the IFQ Allocation permit holder by letter. NMFS would explain the discrepancy and the IFQ Allocation permit holder would have 30 days from the date of the letter to either pay the amount that NMFS has determined should be paid, or provide evidence that the amount paid was correct. The IFQ Allocation permit would not be renewed until the payment discrepancy is resolved. If the IFQ Allocation permit holder submits evidence in support of his/her payment, NMFS would evaluate it and, if there is any remaining disagreement as to the appropriate IFQ fee, prepare a Final Administrative Determination (FAD). A FAD would be the final decision of the Department of Commerce. If the FAD determines that the IFQ Allocation permit holder owes fees, and if the IFQ Allocation permit holder has not paid such fees within the 30 day time period prescribed in the FAD, no tilefish IFQ Allocation permit(s) held by the IFQ Allocation permit holder would be renewed until the required payment is received by NMFS. If NMFS does not receive such payment within the prescribed time period, NMFS would refer the matter to the appropriate

authorities within the U.S. Treasury for purposes of collection. If NMFS does not receive such payment prior to the end of the next cost-recovery billing period, the IFQ Allocation permit would be considered voluntarily abandoned, and not renewable. Cost-recovery payments would be required to be made electronically via the Federal web portal, www.pay.gov, or other internet sites as designated by the RA. Instructions for electronic payment would be made available on both the payment website and the paper bill. Electronic payment options may include payment via a credit card (the RA would specify in the cost-recovery bill acceptable credit cards) or direct ACH (automated clearing house) withdrawal from a designated checking account. Payment by check could be authorized by the RA if the RA has determined that electronic payment is not possible for any reason. NMFS would create an annual IFQ report and provide it to the owner of the IFQ Allocation permit. The report would include annual information regarding the amount and value of IFQ tilefish landed during the prior calendar year, the associated cost-recovery fees, and the status of those fees. This report would also detail the costs incurred by NMFS, including the calculation of the recoverable costs for the management, enforcement, and data collection and analysis, incurred by NMFS during the fishing year.

E. IFQ Allocation Acquisition Cap

Amendment 1 would limit the accumulation of IFQ allocation to 49 percent of the TAL allocated to the IFQ program (after adjustments for incidental catch, research set-aside, and/or overages have been made). This would allow for an IFQ allocation accumulation that is 12 percent greater than the largest yearly landing by an individual tilefish vessel during the 1988 through 1998 period. This allocation cap would also allow the two vessel owners that are anticipated to receive the largest initial allocation to consolidate. Thus, Amendment 1 would prohibit any entity from owning, or holding an interest in, more than 49 percent of the tilefish IFQ TAL at any time. Having an interest in an IFQ allocation (permanent or temporary) is defined so as to include allocation held in the following ways: (1) In an IFQ allocation permit holder's name; (2) as a shareholder, officer, or partner of a company; (3) by an immediate family member; or (4) as an owner or a part owner of a company. Temporary and permanent IFQ transfers would be monitored by NMFS to ensure that a transferee does not exceed this

allocation acquisition limit at any point during a fishing year. A declaration of interest in IFQ allocation(s), listed by IFQ Allocation permit number, would be required annually, at the time IFQ Allocation permits are renewed.

F. Periodic Review of the IFQ Program

The Magnuson-Stevens Reauthorization Act established national guidelines for the implementation of a LAPP. The Magnuson-Stevens Act now includes provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program. The Magnuson-Stevens Act further requires a formal and detailed review within 5 years of the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years). Amendment 1 would institute a provision for regular review and evaluation of the performance of the IFQ program. The measures for review may include, but would not be limited to: Capacity reduction; safety at sea issues; transferability rules; ownership concentration caps; permit and reporting requirements; and fee and cost-recovery issues. Other items may be added to address problems and/or concerns with the IFQ program that are unforeseeable at this time. The formal review would be conducted by the Council.

Recreational Measures

A. Charter/Party Vessel Permit Requirements

Amendment 1 would require that any owner of a party or charter vessel carrying fishermen for hire that fishes for tilefish within the U.S. EEZ obtain a valid Federal tilefish open access Charter/Party permit from NMFS. A private recreational vessel, other than a party or charter vessel (vessel for hire), would be exempt from this permitting requirement; however, it could not land more than the recreational tilefish

landing limit (see Item B below), multiplied by the number of persons on board, per trip. A charter/party vessel could have both a Federal Charter/Party permit and a commercial permit to catch and sell tilefish under an IFQ Allocation permit. However, such a vessel could not fish under the IFQ Allocation permit if it is carrying passengers for a fee. Amendment 1 would require that Federal Charter/Party permitted vessels report tilefish landings on NMFS-issued Fishing Vessel Trip Report forms. The collection of this information would provide valuable data to determine the number of vessels and level of activity in the recreational tilefish fishery.

B. Recreational Bag Limits

Amendment 1 would institute a recreational landing limit of eight tilefish per person per trip. NMFS vessel trip report (VTR) data between 1996 and 2005 indicate that recreational tilefish landings by charter/party vessels have ranged from 81 to 994 tilefish per year. Mean angler catches onboard charter/party vessels have ranged from approximately one fish per angler, in most years, to eight fish per angler. Therefore, the proposed recreational bag limit of eight tilefish per person per trip would be at the upper range of the mean effort seen in the last 10 years.

EFH Measures

A. EFH Designations

Amendment 1 would modify the current EFH designations based on the incorporation of new information and a re-examination of information that was used to develop the original EFH descriptions in the FMP. The new designations would rely on temperature and sediment type as a stronger indicator of EFH for tilefish, with depth as a secondary correlate. The depth that corresponds to the revised temperature profile is between 100 and 300 m (328 to 984 ft). Specific locations and maps for the new proposed EFH designation can be found in Amendment 1.

B. HAPC

Amendment 1 would designate HAPC for juvenile and adult tilefish as clay

outcrop/pueblo village habitats within Norfolk, Veatch, Lydonia, and Oceanographer Canyons at the depth range specified for tilefish EFH (100–300 m, 328–984 ft). Amendment 1 contains locations and maps that depict these areas.

C. Gear Restricted Areas (GRAs)

The Magnuson-Stevens Act requires that Councils evaluate potential adverse effects of fishing activities on EFH and include in FMPs management measures necessary to minimize adverse effects to the extent practicable. Specifically for tilefish, clay outcroppings (pueblo habitats) have been determined to be highly vulnerable to permanent disturbance by bottom-tending mobile gear such as the bottom otter trawl, as described in Amendment 1. Therefore, several GRAs are proposed to minimize impacts on juvenile and adult tilefish EFH from bottom trawling activity. These proposed closed areas do not follow the depth contours exactly, but are designed as polygonal areas that approximate the areas and depths described, while allowing for straight boundaries for enforcement purposes. In addition, because these areas are closed polygons, any areas within those GRAs that are deeper than the maximum depth that defines tilefish EFH would also be closed to bottom trawling activity, even though they are not defined as EFH. Amendment 1 would prohibit bottom trawling, within and adjacent to the four Canyons identified as HAPC, at depths associated with the revised EFH designation. These GRAs were considered because of the potential for current or future bottom otter trawling activity to impact clay outcroppings within these canyon areas. Three Canyons - Norfolk, Veatch, and Lydonia - are known to have tilefish "pueblo burrows" that are formed in exposed clay outcroppings. In addition, clay outcroppings are known to exist in Oceanographer Canyon. As proposed in this rule, the GRA closures would be bounded by the coordinates listed below.

Canyon	N. Lat.			W. Long.		
	De-grees	Min	Sec-onds	De-grees	Min	Sec-onds
Oceanographer	40.0	29.0	50.0	68.0	10.0	30.0
	40.0	29.0	30.0	68.0	8.0	34.8
	40.0	25.0	51.6	68.0	6.0	36.0

Canyon	N. Lat.			W. Long.		
	De-grees	Min	Sec-onds	De-grees	Min	Sec-onds
	40.0	22.0	22.8	68.0	6.0	50.4
	40.0	19.0	40.8	68.0	4.0	48.0
	40.0	19.0	5.0	68.0	2.0	19.0
	40.0	16.0	41.0	68.0	1.0	16.0
	40.0	14.0	28.0	68.0	11.0	28.0
Lydonia	40.0	31.0	55.2	67.0	43.0	1.2
	40.0	28.0	52.0	67.0	38.0	43.0
	40.0	21.0	39.6	67.0	37.0	4.8
	40.0	21.0	4.0	67.0	43.0	1.0
	40.0	26.0	32.0	67.0	40.0	57.0
	40.0	28.0	31.0	67.0	43.0	0.0
Veatch	40.0	0.0	40.0	69.0	37.0	8.0
	40.0	0.0	41.0	69.0	35.0	25.0
	39.0	54.0	43.0	69.0	33.0	54.0
	39.0	54.0	43.0	69.0	40.0	52.0
Norfolk	37.0	5.0	50.0	74.0	45.0	34.0
	37.0	6.0	58.0	74.0	40.0	48.0
	37.0	4.0	31.0	74.0	37.0	46.0
	37.0	4.0	1.0	74.0	33.0	50.0
	36.0	58.0	37.0	74.0	36.0	58.0
	37.0	4.0	26.0	74.0	41.0	2.0

Other Measures

A. Frameworkable Measures

Amendment 1 proposes additional management measures that have been identified in the FMP that could be implemented or adjusted at any time during the year through the framework adjustment process. The recreational management measures that would be added to the list are: (1) Recreational bag limit; (2) fish size limit; (3) seasons; and (4) gear restrictions or prohibitions. The additional measures that would facilitate the periodic review of the IFQ program are: (1) Capacity reduction; (2) safety at sea issues; (3) transferability rules; (4) ownership concentration caps; (5) permit and reporting requirements; and (6) fee and cost-recovery issues. Adding these measures to the list of measures that could be addressed via the framework adjustment process would provide flexibility to managers to address potential changes in the fishery in a timely manner.

B. Submission of Catch Reports

The current FMP requires that the owner or operator of any vessel issued a limited access permit for tilefish submit a tilefish catch report, via the IVR system, within 24 hr after returning to port and offloading. Amendment 1 would ease this requirement to require that tilefish catch reports be submitted via the IVR within 48 hr after offloading. This would allow for tilefish fishermen to report catch via the IVR after the fish have been weighed by the dealer to allow for a more accurate report of landings via IVR. This alternative is expected to allow fishermen to provide better data. Amendment 1 would also require that the VTR serial number be inputted into the IVR system in order for this to be used as a trip identifier to match all reported IVR landings to dealer reports. This would allow for better matching of IVR data to dealer (weighout) data on a trip-by-trip basis. In addition, the dealer number would be

required to be inputted into the IVR system. This would ensure that amounts of tilefish landed, and ex-vessel prices, are properly recorded for quota monitoring purposes and the calculation of IFQ fees, respectively. This would also ensure an accurate association of tilefish landings with IFQ Allocations.

C. No Discard Provision

Amendment 1 would prohibit any commercial vessel from discarding tilefish. This would prohibit the practice of highgrading, whereby low-value tilefish are discarded so that higher-value tilefish may be retained. As indicated in Amendment 1, current NMFS data show that commercial discard of tilefish is almost non-existent. Therefore, this is an opportune time to prohibit commercial discards.

D. Monitoring of Tilefish Commercial Landings

The management unit for this FMP is defined as all golden tilefish under U.S.

jurisdiction in the Atlantic Ocean north of the Virginia/North Carolina border. Tilefish south of the Virginia/North Carolina border are currently managed as part of the Fishery Management Plan for the Snapper-Grouper Fishery managed by the South Atlantic Fishery Management Council. Currently, the FMP does not restrict fishermen that hold both a Federal Northeast tilefish permit and a Southeast Federal snapper/grouper permit, to fish for tilefish both inside and outside of the Tilefish Management Unit (TMU), as defined in § 648.2, on the same trip. If tilefish landings are not properly reported to indicate where each species is caught, the recovery of the stock could be adversely affected. To avoid these reporting problems, Amendment 1 would require vessels that catch tilefish from the TMU to land tilefish within the TMU only, and prohibit combination trips in which vessels fish both inside and outside the TMU for golden tilefish on the same trip. Furthermore, Amendment 1 would prohibit dealers from purchasing or otherwise receiving for commercial purposes tilefish caught in the EEZ from outside of the TMU, as described in § 648.2, unless otherwise permitted under 50 CFR part 622. These new requirements would ensure that all tilefish landings are reported in the appropriate management unit.

E. Overages

Under Amendment 1, an IFQ allocation that is exceeded will be reduced by the amount of the overage in the subsequent fishing year. 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 had already been landed or transferred, the IFQ Allocation permit would indicate a reduced allocation for the amount of the overage in the next fishing year. If quota is temporarily transferred and the lessee exceeds a permit holder's temporary IFQ allocation, the overage would be deducted from the allocation of the permanent IFQ Allocation permit holder who leased the IFQ allocation.

Classification

Pursuant to Section 304 (b)(1)(A) of the Magnuson-Stevens Act, NMFS has determined that this proposed rule is consistent with the 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.

A Notice of Availability (NOA) was published on May 4, 2009. Public comments are being solicited on the amendment through the end of the comment period stated in the NOA (July 6, 2009). Public comments on the proposed rule must be received by the end of the comment period on the amendment, as published in the NOA, to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment, or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

The Council prepared an FEIS for Amendment 1; the FEIS describes the impacts of the proposed Amendment 1 measures on the environment. Since most of the measures would determine whether or not fishermen could continue to fish for tilefish, and at what level in the future, the majority of the impacts are social and economic. Although the impacts may be negative in the short term for fishermen who do not qualify for an IFQ Allocation, the long-term benefits to the Nation of a tilefish fishery without over-capitalization and derby style fishing would be positive.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average as follows:

1. Initial application for an IFQ Allocation permit - 30 min per response;
2. Renewal application for an IFQ Allocation permit - 15 min per response;
3. Appeal of an initial IFQ Allocation permit denial - 2 hr per response;
4. Completion of an IFQ allocation interest declaration form - 5 min per response;
5. Application for an IFQ transfer (permanent or temporary) - 5 min per response;

6. Electronic Payment of Cost-recovery Fees - 2 hr per response;

7. Additional IFQ Reporting Requirements - 2 min per response.

These 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.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the RA as specified in **ADDRESSES**, and by e-mail to *David_Rostker@omb.eop.gov* or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

Pursuant to 5 U.S.C. 603, NMFS prepared an IRFA, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule, is found in the preamble to this document. There are no Federal rules that duplicate, overlap, or conflict with this proposed rule. This action primarily proposes to implement an IFQ program in the tilefish FMP.

Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply

Currently the tilefish quota is divided among three limited access fishing categories under the limited access program. A total of 31 vessels (Full-time, Part-time, and CPH) are currently permitted to participate in the limited access tilefish fishery. In addition, approximately 2,400 vessels currently hold an open access tilefish Incidental category permit. The proposed action would mostly affect the 31 vessels that participate in the fishery under the current limited access system. The proposed IFQ program only applies to the Full-time and Part-time tilefish

vessels. If this action is implemented, vessels with an Incidental tilefish permit would continue to operate with a tilefish open access permit that would allow the landing of an incidental catch of tilefish, i.e., 300 lb (136 kg). In addition, according to NMFS VTR data, 32 vessels have landed tilefish from 1996 through 2005. The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing industry, as a firm with receipts (gross revenues) of up to \$4.0 and \$6.5 million, respectively. All persons or entities that own permitted vessels fall within the definition of small business.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains several new collection-of-information, reporting, and recordkeeping requirements. The following describes these requirements.

1. Initial IFQ Allocation Permit

Since 32 vessels have landed tilefish during the period described above, NMFS estimates that there would be, at most, 32 applicants for an IFQ Allocation permit. Each IFQ Allocation permit application will take approximately 30 min to process. Consequently, the total time burden for the initial applications would be approximately 16 hr ($32 \times 30 \text{ min}/60 \text{ min} = 16$). According to the analysis for Amendment 1, only 13 IFQ applicants are expected to qualify and consequently renew their applications each year. IFQ Allocation permit renewal is estimated to take 15 min per application on average, for a total burden of approximately 3.25 hr per year ($13 \times 15 \text{ min}/60 \text{ min} = 3.25$). Thus, the 3-year average total public time burden for IFQ Allocation permit applications and permit renewals would be approximately 7.33 hr ($(15.5 + 3.25 + 3.25)/3 = 7.33$). Up to 32 applicants could potentially appeal their IFQ Allocation permit application decision over the course of the application period. The appeals process is estimated to take 2 hr per appeal to complete, on average, for a total burden of 64 hr. The burden of this one-time appeal, annualized over 3 years, would be 21.33 hr.

2. Permanent and Temporary Transferability of IFQ

Using the NMFS Northeast Region Atlantic Surfclam & Ocean Quahog (SC/OQ) ITQ Transfer Program (OMB Control No. 0648-0240) as a proxy for the response rate for the tilefish IFQ quota transfer program, it is anticipated

that there would be approximately 65 quota transfers (permanent and temporary) annually in the tilefish IFQ program. It is reasonable that it would take the same amount of time to complete a tilefish IFQ transfer application as it does to complete a SC/OQ transfer application. Therefore, using SC/OQ as a proxy, it is estimated that each transfer application would take approximately 5 min to complete. As noted above, the Council estimates that 13 entities would qualify for an initial tilefish IFQ Allocation. If these 13 IFQ Allocation permit holders completed 5 transfers annually, at 5 min per form, the annual burden would be approximately 5 hr.

3. IFQ Allocation Acquisition

To administer the 49-percent limit on IFQ allocation acquisition, tilefish IFQ Allocation permit holders would be required to submit an IFQ allocation interest declaration form annually, at the time that they submit their IFQ Allocation permit renewal applications. If there are approximately 13 initial tilefish IFQ Allocation permits issued, there would be 13 interest declaration forms each in the second and third years. However, due to IFQ allocation transfer, it is possible that there could be a different number of IFQ Allocations after the initial year. It is estimated that it would take 5 min to complete each IFQ allocation interest declaration form; therefore, the annual reporting burden would be 1 hr ($13 \times 5 \text{ min}/60 \text{ min}$), or 1 hr, averaged over the first 3 years.

4. Cost-recovery Fee Collection

As NMFS is initiating cost-recovery for this program, there are no current data for use in estimating the burden associated with submitting a cost-recovery payment. Using the burden per response used by the NMFS Alaska Region's Individual Fishing Quota Cost-Recovery Program (OMB Control No. 0648-0398) as a proxy for the tilefish IFQ program, it is estimated that it would take 2 hr per response. Each tilefish IFQ Allocation permit holder would be required to submit a cost-recovery payment once annually. Assuming that there are 13 tilefish IFQ Allocation permit holders, the burden hour estimate is 26 hr (13×2).

5. IFQ Reporting Requirements

Tilefish vessels would be required to input their pre-printed VTR serial number and dealer number into the IVR system within 48 hr of landing. Using the burden per response used by the current Northeast Family of Forms (OMB Control No. 0648-0202) as a proxy for the tilefish IFQ program, it is

estimated that it would take 2 min for each IVR response. Landings data collected from vessels within the Full-time Tier-1 category for the previous 3 years indicate that they land, on average, 19 times a year. The current Full-time Tier 1 category is thought to most closely resemble the future IFQ program, as vessels currently have a cooperative system in place to evenly distribute landings throughout the year. As stated earlier, the Council estimates that 13 entities would qualify for an initial tilefish IFQ Allocation. The 13 vessels associated with these initial allocations would each call into the IVR system approximately 19 times a year. Amendment 1 would require two new IVR reporting requirements (dealer number and pre-printed VTR serial number). Each call to the IVR system would now include an additional two responses, each requiring 2 min of response time. This additional burden would be approximately 16 hr ($13 \times 19 \times 4 / 60 \text{ min}$).

Economic Impacts of the Proposed Measures

Based on preliminary unpublished NMFS dealer data from Maine to Virginia, the 2005 total commercial value for tilefish was estimated at \$3.3 million from Maine through Virginia.

As estimated above, assuming 2005 ex-vessel prices, the overall reduction in gross revenue under the proposed measures would be less than \$100,000 relative to 2005. More specifically, the proposed IFQ program is projected to increase ex-vessel revenue by approximately \$253,000 resulting from spreading landings throughout the year and not engaging in derby-style fishing. The implementation of cost-recovery, under Amendment 1, will decrease vessel gross revenues by approximately \$141,066, assuming a TAL of 1.995 million lb (0.905 million kg), and 2005 tilefish ex-vessel value. The initial default fee and cost-recovery rate of 3 percent may change in subsequent years if the fee and cost-recovery is lower than initially assessed. Therefore, potential changes in revenue associated with the cost-recovery program may be lower than estimated here. The potential reduction in ex-vessel revenue associated with the implementation of GRAs could be approximately \$210,000. However, as indicated in the analysis of the GRA alternatives, it is expected that localized reductions in revenues due to the proposed GRAs are likely to be partially or completely recouped due to an increase in effort outside of the GRAs. Effort displacement could, however, increase operating costs for fishermen who are forced to fish in

other areas. As such, the lost revenue estimates represent a worst case prediction of the anticipated loss in ex-vessel revenues that would result from closing this area to bottom otter trawling. Finally, the proposed IFQ program also has associated costs to fishermen and the Federal Government due to processing of payment fees, sale of IFQ allocations, and lease of IFQ allocations. These additional costs are estimated to be approximately \$1,270 for fishermen and \$2,110 for the Federal Government during the first year of implementation. These additional costs are expected to be reduced thereafter to approximately \$600 and \$625 for fishermen and the Federal Government, respectively.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

Measures Affecting Fishery Program Administration

1. IFQ System

A detailed description of each IFQ Allocation alternative is presented in Section 5.1 of Amendment 1, and the analysis of impacts is presented in Section 7.1. The original FMP implemented a limited entry program and a tiered commercial quota allocation of the TAL. However, the original FMP does not address how the quota is to be distributed among vessels within each of the three limited access fishing categories. Currently, the tilefish fishery is overcapitalized. While there are fewer boats participating in the fishery today, there are still more boats in the fishery than required to efficiently harvest the TAL. Furthermore, derby-style fishing conditions in the Part-time and Full-time Tier 2 categories have forced early closures in recent years. The proposed IFQ program would eliminate the derby-style fishing that exists under the current management system. Under the proposed IFQ program, fishermen could decide when to harvest, taking into consideration weather conditions and price at the dock, without potentially losing their fishing opportunity if the quota is reached.

The IFQ Allocation management measures within Amendment 1 analyze a wide variety of different systems. The evaluated IFQ programs could have implemented quota allocations for the Full-time Tier 1 category only, or for the Full-time Tier 1 and Tier 2 categories only, or for all Full-time and Part-time categories. As is currently the case, the Full-time Tier 1 category would initially receive 66 percent of the initial TAL (after adjusting for incidental category

landings), the Full-time Tier 2 category vessels would receive 15 percent, and the Part-time category would receive 19 percent. However, each IFQ alternative proposed under Amendment 1 would allocate specific quota allocations to vessels within the three permit categories based on historical landings from one of three proposed sets of time periods (average landings for 1988–1998, average landings for 2001–2005, or best 5 years from 1997 to 2005) or by dividing the overall quota for each permit category equally among all permitted vessels in each category.

As previously indicated, all of the IFQ Allocation alternatives considered under Amendment 1 would have the potential to reduce fishing capacity, as it is expected that these alternatives would all allow fishermen to improve overall fishing methods by providing more flexibility in deciding when, where, and how to fish. The reduction in fishing capacity could potentially be the highest under the IFQ programs evaluated that include the largest number of permit holders (e.g., Alternatives 5.1.D and 5.1.E within Amendment 1). Furthermore, alternatives that allocate the initial IFQ in a manner that rewards more recent fishing participation would also further reduce excess fishing capacity and latent fishing effort. In addition, smaller operators, with limited quota allocations, but with other fishing opportunities and earnings, may quickly exit the fishery. Operators with larger quota allocations, more experience, and/or significantly less fishing opportunities and earnings in other fisheries (or sectors of the economy) may take longer, or not exit the fishery at all. These marginal operations are expected to continue to fish for tilefish under an IFQ program as long as they can cover their variable costs. By improving catch efficiency under an IFQ program, operating costs could be lowered as fishermen have more flexibility in their input choices and trip planning. This in turn is expected to promote safer at-sea operating conditions.

The Council adopted management measures to implement an IFQ program in all three of the current limited access permit categories. Under Amendment 1, IFQ Allocation for qualifying Full-time vessels would be distributed using average landings for the 2001–2005 period. For Part-time vessels, an equal allocation would be used to calculate IFQ for vessels that landed tilefish during the 2001–2005 period. The specific IFQ Allocations associated with all of the evaluated alternatives are fully described in section 7.1 of Amendment

1. It is expected that landings for Full-time vessels would not change under an IFQ program when compared to the landings generated by these vessels under the current limited access system in 2005 (base year). The proposed IFQ program is not expected to change the overall amount of tilefish landed, since this fishery is already operating under a hard TAL system, and the TAL is being fully harvested. The IFQ program would only be dividing and assigning the current TAL (as reduced by research set-asides, incidental catch, and prior year overages) to individual fishermen. Overall tilefish prices are not expected to change significantly, and the overall landings are likely to remain constant under the current rebuilding scheme. However, it is likely that Part-time vessels qualifying for IFQ Allocations may spread their landings throughout the year (to avoid the current derby-style fishing practices) and, therefore, they are more likely to receive higher prices for their product. Assuming the current TAL allocated to the Part-time vessels, and the 2005 tilefish price differential between Full-time and Part-time vessels, it is expected that Part-time vessels may generate revenue increases, from spreading landings throughout the year and not engaging in a derby-style fishery, of approximately \$253,000. An increase in tilefish prices could decrease consumer surplus. If there is a change in the price of tilefish there would be associated changes in producer surplus (PS). The magnitude of the PS change will be associated with the price elasticity of demand for this species. The law of demand states that the price and quantity demanded are inversely related. The elasticity of demand is a measure of the responsiveness of the quantity that will be purchased by consumers, given changes in the price of that commodity (while holding other variables constant). Seafood demand, in general, appears to be elastic. For example, an increase in the ex-vessel price of tilefish may increase PS. A decrease in the ex-vessel price of tilefish may also increase PS if we assume that the demand for tilefish is moderately to highly elastic. The exact shape of the market demand curve for tilefish is not known; therefore, the magnitude of these changes cannot be fully assessed. In addition, the proposed tilefish IFQ program may also affect the ability of fishermen to negotiate better prices for their product.

Under the status quo alternative, the commercial tilefish fleet would likely continue to be characterized by higher than necessary levels of capital investment and increased operating

costs. In addition, shortened seasons and limited at-sea safety, price fluctuations, and depressed ex-vessel price, would continue. The implementation of an IFQ program would likely decrease overcapitalization, distribute fishing effort throughout the year, decrease operating costs by allowing fishermen to better manage their operations, and potentially increase ex-vessel prices. The proposed measures are not expected to change enforcement costs drastically. However, it is possible that these costs would decrease.

2. Permanent Transferability of Ownership

The Council considered five alternatives that would define transferability of ownership.

Restrictions on who may purchase quota allocations, after an initial IFQ allocation has been established, are frequently a major consideration when developing IFQ programs. Transfer restrictions are generally used to address concerns that implementation of an IFQ program will result in drastic and rapid changes to the status quo. In the short-run, transferability results in lower operating costs and higher production value in fisheries that have large harvesting capacity. Fishermen that can operate at the lowest cost, or produce the most valuable product, are able to buy or lease fishing quotas from marginal operators at a price that is satisfactory to both parties. In the long-run, transferability of quota is anticipated to optimize the size of the tilefish fishing fleet as an allocation holder will have no economic incentive to invest in a level of capital larger than needed to land their quota allocation. If free transfer of quota allocations is implemented under an IFQ program, the existing fishery would likely change rapidly and/or substantially. In addition, it is possible that IFQ could be sold to entities that are willing to pay the highest price. It is likely that these entities would operate at the lowest cost, produce the most valuable product, and in general terms, be the most efficient.

The no-action alternative would prohibit the transfer of IFQ allocations. Thus, the no-action alternative would not benefit those wishing to sell their allocations or buy allocations to enter the fishery or expand fishing operations. The Amendment 1 preferred alternative for quota allocation transfer would allow for free quota allocation transfers where any entity could buy quota allocations with limited restrictions, and would enhance the market for IFQ allocations to a greater extent than any

other evaluated alternative. The other alternatives would all restrict the transfer of IFQ in some fashion, at a level between the no-action and the preferred alternative. It is likely that increased demand for a commodity that has a fixed supply would tend to increase the selling price. These alternatives are not expected to alter the amount of tilefish landings and, as such, changes in the ex-vessel price, consumer surplus, and PS are not expected. In addition, no changes in enforcement costs are anticipated as a result of this action. However, the harvest cost for individuals that lease IFQ Allocations may increase, and thus, their producer surplus may decrease.

3. Temporary Transferability of Ownership

As indicated in Section 7.3 of Amendment 1, some degree of temporary transfer (leasing) flexibility may be important to allow fisheries to adapt to change. For instance, leasing would allow fishermen without a quota allocation, or a small initial quota, to lease quota allocation in order to participate in the fishery, and fine tune their operations before they make a commitment to purchase IFQ allocations. The supply and demand factors that affect the price of IFQ allocations, and the benefits to fishing operations that are derived from the various levels of transferability systems discussed under the previous alternative, also apply here. As occurs with the permanent transfer of ownership, the difference in leasing price for the alternatives evaluated cannot be estimated with the existing information. It is possible that a lease would move quota allocations to individuals that are willing to pay the highest price. It is likely that these individuals would operate at the lowest cost, produce the most valuable product, and in general terms be the most efficient operators. However, the overall harvest cost may increase for these individuals as a consequence of leasing IFQ Allocations. IFQ Allocation permit holders can also benefit from leasing, as they can modify their operations to deal with market fluctuations, lease their allocations in the event of some type of physical or mechanical hardship, or lease to generate revenue. These alternatives are not expected to alter the amount of tilefish landings; therefore, changes in the ex-vessel price and consumer surplus are not expected. In addition, no changes in enforcement costs are anticipated as a result of this action.

4. IFQ Allocation Acquisition

IFQ consolidation may lead to positive economic development and may be considered a rational outcome of a LAPP. However, consolidation may result in only a few participants enjoying the benefits of the public tilefish resource. As the price of allocations rise, smaller operators may not be able to afford to buy into the fishery. Therefore, smaller operators may lease allocations and the fishery may become comprised of absentee owners. Alternative 4A would not restrict allocation consolidation. This could potentially lead to increased economic efficiency as vessel owners could attempt to maximize profit by improving vessel efficiency and benefit from the opportunity to reduce production costs (economic efficiency grounds; exploitation of economies of scale). Other alternatives would limit the amount of consolidation in the fishery, which may not allow for the most efficient vessel operations, and/or impact the initial quota allocation. An excessive allocation limit can only be defined in the context of a well defined problem, which is related to the amount of quota allocation owned or controlled by a single entity, or by the number of operating entities. The excessive allocation limit is defined as the limit that prevents the problem from occurring, or keeps it at an acceptable level. One of these problems is the potential control of market power in the tilefish fishery. The Amendment 1 preferred alternative would set an individual allocation accumulation limit at 49 percent of the TAL (adjusted). In selecting this alternative, the Council considered the potential market power impact that an individual entity could have when accumulating tilefish IFQ allocations, and considered the historical fishing practices in the fishery. Due to the large number of substitutes for tilefish that are available in the marketplace, the Council does not believe that any level of IFQ ownership in the tilefish fishery would allow a single harvester to control the market price for tilefish. The Council also considered historical landings and participation when setting the allocation cap at 49 percent. Prior to the implementation of the original FMP, one vessel landed approximately 36 and 37 percent of the overall tilefish landings during the 1989 and 1990 years, respectively. Therefore, a 49-percent IFQ allocation acquisition limit would provide tilefish vessels with an opportunity to accumulate allocations modestly above what some specific vessels have landed in recent history in

order to potentially allow for the most efficient operations to harvest the quota. Furthermore, the Council was concerned that, if the overall TAL is reduced in the future, then Full-time Tier 1 and Tier 2 vessels may not be able to fish at efficient levels and may require the buying or leasing of additional allocations from other vessels in order to continue to participate in the fishery. The vessels that originally qualified for the Full-time permit categories had more than enough capacity to harvest the current quota level. In fact, in 1997, three Full-time vessels landed between 706,000 lb (320,236 kg) and 811,000 lb (367,863 kg) of tilefish. These alternatives are not expected to alter the amount of tilefish landings or result in changes to the ex-vessel price, consumer surplus, or PS. No changes in enforcement costs are anticipated as a result of this action.

5. Commercial Trip limits

Amendment 1 analyzed an alternative that would have instituted a commercial trip limit of 15,000 lb (6,804 kg) of tilefish for the Part-time category, if an IFQ program was not adopted for this category by the Council. The Part-time category had early closures in 2002, 2004, 2005, and 2006. A threshold analysis (see section 7.5.1 of the Amendment 1 document) indicated that a 15,000-lb (6,804-kg) threshold would affect few trips, according to VTR landings data for the 2001 through 2005 fishing years. Therefore, it is not likely that this trip limit would have significantly affected the fishing season for this permit category. Neither of these alternatives are expected to alter the amount of tilefish landings and, as such, changes in the ex-vessel price, harvest cost, consumer surplus, and PS are not expected. No changes in enforcement cost or distributive effects are anticipated as a result of this action.

6. Fees and Cost-recovery

As previously indicated, NMFS is required under the Magnuson-Stevens Act to collect fees to recover the costs directly related to the management, enforcement, and data collection and analysis of IFQ programs. Under section 304(d)(2) of the Magnuson-Stevens Act, the Secretary is authorized to collect a fee to recover these costs. The fee shall not exceed 3 percent of the ex-vessel value of the fish harvested. A fee and cost-recovery program for the tilefish fishery would be implemented under the two action alternatives. The main difference between these two alternatives is the manner in which payments are collected and made. Under Alternative 6B, the IFQ

Allocation permit holder would be responsible for self-collecting his or her own fee liability for all of his/her IFQ tilefish landings for later submission to NMFS. Under Alternative 6C, federally permitted dealers would be required to collect a fee, for later submission to NMFS, when they purchase tilefish. Each of these alternatives would implement a 3-percent fee of the actual ex-vessel value of tilefish landed under the IFQ program. The fee can be adjusted downward by NMFS in the event the recovered fees exceed the costs directly related to the management, enforcement, and data collection and analysis of the LAPP components of the tilefish fishery. If an IFQ program is implemented for all permit categories, based on a TAL of 1.995 million lb (904,917 kg) of tilefish, then applying a 2005 coast wide average ex-vessel price for all market categories of \$2.48 per pound at the maximum fee level of 3 percent, the total fee expected to be collected in the first year of the program would be \$141,066. Applying these assumptions regarding quota and price at the 2-percent fee level, the total fee expected to be collected would be \$94,044. Producer surplus would be reduced by the amount of the fee plus any other costs associated with paying the fee. Those costs would include time and materials required for completing the paperwork and paying the fee. Preliminary analyses show that the management, enforcement, and data collection and analysis cost would be approximately \$94,000, which would be less than the 3-percent maximum fee. Under a dealer-pays cost-recovery scheme, dealers must report landings to the NMFS electronic system via the Internet. If needed, a dealer may have to expend approximately \$1,500 for the start-up costs associated with computer and software purchases in order to use the electronic reporting and cost-recovery fee payment systems. In addition, between \$200 and \$400 a year may be required for Internet access. These alternatives are not expected to alter the amount of tilefish landings; therefore, changes in the ex-vessel price, harvest cost, and consumer surplus are not expected. No changes in enforcement cost or distributive effects are anticipated as a result of this action.

7. IFQ Program Review Process

Alternative 7C was considered, but rejected for further analysis, because this alternative would implement a review process that may be too complicated and tedious for managers and stakeholders to implement. It was not given further consideration beyond the justification for rejection. Under

Alternative 7A, a formal review process would not be required if an IFQ program is put in place for the commercial tilefish fishery. Alternative 7B would provide for an enforceable provision for regular review and evaluation of the performance of the IFQ program. Either alternative may allow fishermen to engage in long-term planning and investment. Long-term fishing privileges reduce business uncertainty and provide incentives to invest in the resource, thus allowing for the flexibility for review and/or adjustments to improve the IFQ program. These alternatives are not expected to alter the amount of tilefish landings and, as such, changes in the ex-vessel price, harvest cost, and consumer or PS are not expected. No changes in enforcement costs or distributive effects are anticipated as a result of this action.

8. Reporting Requirements

The No-Action alternative would not change the current reporting system in the limited access fishery. Alternative 8B would modify the current reporting system to include additional requirements that would identify landings under an IFQ program in a more efficient manner. Under Alternative 8B, a trip identifier (pre-printed VTR serial number) would be mandatory for IVR reports in order to match all reported IVR landings to the dealer reports. This would allow for all IVR data to match dealer data on a trip-by-trip basis, and this would ensure that amounts of tilefish landed and ex-vessel prices are properly recorded for quota monitoring purposes and the calculation of IFQ fees, respectively. In addition, the dealer number would also need to be recorded into the IVR to have vessels report pounds landed, by dealer, on the IVR. This action is purely administrative and is not expected to alter the amount of tilefish landings and, as such, changes in the ex-vessel price, harvest cost, and consumer or PS are not expected. In addition, no changes in enforcement cost or distributive effects are anticipated as a result of this action. The current tilefish regulations require that 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 hr after returning to port and offloading. The requirement to provide tilefish catch reports within 24 hr after landing/offloading may force fishermen to report preliminary catch data into the IVR system. In addition, industry members have also indicated that, if they report landings after reaching port but before the fish has been packed-out, the catch estimates can be off by as

much as 1,500 lb (680 kg). Alternative 9A would maintain the status quo IVR reporting requirements. Under alternative 9B, 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 48 hr after offloading fish. It is anticipated that increasing the time allowed for IVR reporting from 24 hr to 48 hr would allow for tilefish catch reports to be more accurate. This action is purely administrative and is not expected to alter the amount of tilefish landings and, as such, changes in the ex-vessel price, harvest cost, and consumer or PS are not expected. No changes in enforcement cost or distributive effects are anticipated as a result of this action.

Recreational Fishing Sector

1. Recreational Charter/Party Vessel Permits and Reporting Requirements

The No-Action alternative would not implement permit and reporting requirements for Charter/Party permitted vessels and operators. Alternative 12B would require that Charter/Party vessels fishing for tilefish obtain a Federal open access Charter/Party permit, and require that any vessel fishing under a Charter/Party permit have on board at least one person who holds an operator permit. According to NMFS data, 32 vessels landed tilefish between 1996 and 2005. It is expected that all of these vessels will apply for a Charter/Party permit in order to maintain flexibility in their operations. The implementation of this alternative would likely increase the understanding of the recreational participation in the fishery, and would assist managers to better assess fishing trends. This action is purely administrative and is not expected to change current participation of charter/party vessels in the tilefish fishery.

2. Recreational Bag-Size Limits

None of the regulations that implemented the initial FMP are specific to the recreational sector. When the FMP was first developed, the recreational participation in this fishery was small. As such, recreational management measures were not included in the FMP. A small recreational fishery briefly occurred during the 1970's, but subsequent recreational catches appear to be small. However, according to anecdotal information, there appears to have been an increase in the level of recreational fishing effort on this species in recent years. Nonetheless, VTR data indicate that, between 1996 and 2005, the

number of tilefish caught by charter/party vessels from Maine through Virginia was low, averaging 444 fish per year. In addition, Marine Recreational Fisheries Statistics Survey data indicate that, between 2000 and 2005, only two trips reported tilefish as the primary target species (see section 6.1 of Amendment 1). Under the status quo alternative, no recreational bag-size limits in the tilefish fishery would be implemented. The preferred alternative would set the tilefish recreational bag limit at the upper range of the mean effort seen between 1996 and 2005. Other alternatives would establish a recreational bag limit at lower levels. As described within Amendment 1, recreational fishermen typically fish for tilefish when tuna fishing, especially during the summer months. Fishers are highly unlikely to catch tilefish while targeting tuna on tuna fishing trips. However, these boats may fish for tilefish at any time during a tuna trip (i.e., when the tuna limit has been reached, on the way out or in from a tuna fishing trip, or at any time when tuna fishing is slow). While fishing for tuna, recreational fishermen may trawl using rod and reel (including downriggers), or use handline gear. Rod and reel is the typical gear used in the recreational tilefish fishery. There is very little information available to empirically estimate how sensitive the affected anglers might be to the proposed recreational bag-size limits. Even though the proposed management measures could affect the demand for trips for tilefish, it is not expected that they would negatively affect the overall number of recreational fishing trips in the North and Mid-Atlantic regions. Therefore, the demand for fishing trips should remain relatively unaffected.

Monitoring of Tilefish Landings

Improve Monitoring of Tilefish Landings Caught in the Mid-Atlantic Region

Currently, vessels that hold both a Federal Tilefish and Snapper/Grouper permit could potentially fish for golden tilefish, inside and outside of the Tilefish Management Unit, on the same trip. Under the status-quo alternative, if tilefish landings are not reported accurately, with catch location, the recovery of the stock could be adversely affected. The preferred alternative under Amendment 1 would not be expected to change fishing methods or practices. However, they would allow for better reporting and accounting for catches and landings of golden tilefish in the management unit. This action is not expected to effect tilefish landings and,

as such, changes in the ex-vessel price, harvest cost, and consumer or PS are not expected. No changes in enforcement cost or distributive effects are anticipated as a result of this action.

Framework Adjustment

Framework Adjustment Process

The No-Action alternative would maintain the status quo and, as such, the list of management measures that can be added or modified through a streamlined public review process would not change. The preferred alternative would allow for an expansion to the list of management measures that have been identified in the FMP that can be implemented or adjusted at any time. The recreational management measures that are proposed to be added to the list include: (1) Recreational bag-size limit, fish size limit, and seasons; and (2) recreational gear restrictions or prohibitions. Measures to facilitate the periodic review of the commercial IFQ program include: (1) Capacity reduction; (2) safety at sea issues; (3) transferability rules; (4) ownership concentration caps; (5) permit and reporting requirements; and (6) fee and cost-recovery issues. The inclusion of these management measures to the list of measures that can be addressed by the framework adjustment process would incorporate into the FMP mechanisms to control and address potential future increases in tilefish recreational landings and/or modifications to the IFQ program. This action is purely administrative and is not expected to alter the tilefish landings and, as such, changes in the ex-vessel price, harvest cost, and consumer or PS are not expected. No changes in enforcement cost or distributive effects are anticipated as a result of this action.

EFH Measures

1. EFH Designations

Under the No-Action alternative, the current EFH designations for tilefish life stages would be maintained as described in Amendment 1; therefore, this alternative is expected to have neutral economic impacts. The impacts of designating EFH for tilefish relative to having no designation was evaluated in the original FMP; however, this no action alternative only proposes to maintain the currently established EFH designations. If the preferred alternative (16B) were implemented, the EFH designations for tilefish would be redefined as described in section 5.16.B of Amendment 1. Impacts of the preferred alternative on the social and economic aspects of human

communities are expected to be positive relative to the No-Action alternative. Under the preferred alternative, the EFH designation would be revised to be more narrowly defined in terms of substrate type, depth, and temperature ranges, and would include more detailed descriptions of essential substrates for juvenile and adult tilefish. The preferred alternative would allow for more effective consultations on oversight of vulnerable EFH areas when compared to the current definitions. This action is not expected to affect tilefish landings and, as such, changes in the ex-vessel price, harvest cost, and consumer or PS are not expected. No changes in enforcement cost or distributive effects are anticipated as a result of this action.

2. HAPC Designation

The Amendment 1 document analyzes eight possible HAPC designations, based on individual alternatives or combinations of alternatives. Alternative 17A, the no-action alternative, would maintain the existing HAPC designation established under the FMP. Alternative 17B would modify the current HAPC designation for juvenile and adult tilefish, and redefine HAPC for juvenile and adult tilefish to be clay outcrop/pueblo village habitats in an area of the outer continental shelf and slope bounded by 70°00' W. long. and 39°00' N. lat., in depths of 100 to 300 m (328 to 984 ft). The preferred alternative would define HAPC for juvenile and adult tilefish to be clay outcrop/pueblo village habitats in an area of the outer continental shelf and slope within Norfolk, Veatch, Lydonia, and Oceanographer Canyons at the depth range specified for tilefish EFH (100 to 300 m (328 to 984 ft)). Alternatives 17C and 17D are smaller areas designated as HAPC relative to the No Action alternative or Alternative 17B. The potential impacts on the social and economic aspects of human communities from the action alternatives are expected to be positive relative to the no action alternative, since they could result in less restricted human activity when compared to the larger status quo HAPC area. In addition, the two canyon HAPC alternatives are much smaller than either Alternative 17A or 17B and include a higher proportion of deep, steep bottom areas on the edge of the continental shelf that are not as accessible to fishing as the shallower, flatter areas on the shelf that make up most of the Alternative 17A and 17B areas. This action is not expected to affect tilefish landings and, as such, changes in the ex-vessel price, harvest

cost, and consumer or PS are not expected. No changes in enforcement cost or distributive effects are anticipated as a result of this action.

3. Measures to Reduce Gear Impacts on EFH

Under the preferred alternative, the Council had to decide which canyons to select for GRA designation. The Council could have selected to close one, some, or all of the 13 deep-water canyons to bottom otter trawling. The Council selected to close a portion of Norfolk, Veatch, Lydonia, and Oceanographer Canyons to bottom otter trawling to reduce gear impacts on juvenile and adult tilefish EFH. The associated potential changes in ex-vessel revenues associated with each of the evaluated GRAs are discussed in detail in sections 7.18.5 and 7.18.6 of Amendment 1. The status quo alternative is expected to have neutral short-term social and economic impacts, as the current status quo would be maintained. However, there could potentially be longer-term negative socioeconomic impacts if the failure to establish a GRA prevents potential future increases in the productivity and associated fishery yields of managed resources in the region. Alternative 18B would implement a closure to protect tilefish habitat between 70°00'W. long. and 39°00'N. lat. on the outer continental shelf/slope from bottom otter trawling. This area was considered for closure because of the extensive bottom trawl activity identified in the overlap analysis (Appendix E of Amendment 1) in these two statistical areas. This alternative is expected to have significant short-term negative socioeconomic impacts based on an examination of 2005 VTR data within the proposed closure area. It should be noted that, because the data are self-reported, there could be errors in the spatial information or reported data resulting from inaccurate reporting, unclear handwriting, or errors in transcribing the written information. Potential losses in ex-vessel revenue could be as high as \$18.3 million (when compared to 2005 fishing opportunities) if the current EFH designation is not changed. Economic losses would potentially be slightly lower under the preferred EFH alternative (Alternative 16B). The combined potential changes in ex-vessel revenues associated with the implementation of GRAs in Norfolk, Veatch, Lydonia, and Oceanographer Canyons would be approximately \$210,000. As discussed in Amendment 1, it is likely that errors in these estimates exist, because the VTR data are not collected at an appropriate level

of detail for this type of analysis. Nevertheless, these values provide an estimate of the fishing activity in the proposed GRAs. It is expected that localized reductions in revenues due to the proposed GRAs are likely to be partially or completely recouped due to an increase in effort outside of the closed area. This effort displacement could, however, increase operating costs for fishermen who are forced to fish in other areas. As such, the lost revenue estimates represent a worst case prediction of the anticipated loss in ex-vessel revenues that would result from closing this area to bottom otter trawling. This action is not expected to alter the amount of tilefish landings; therefore, changes in the ex-vessel price, harvest cost, and consumer or PS are not expected. No changes in enforcement cost or distributive effects are anticipated as a result of this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 12, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, 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 § 648.2, the definitions for “Bottom-tending mobile gear,” “Lessee,” and “Lessor” are revised, and “Interest in an IFQ allocation” is added to read as follows:

§ 648.2 Definitions.

* * * * *

Bottom-tending mobile gear, with respect to the NE multispecies and tilefish fisheries, means gear in contact with the ocean bottom, and towed from a vessel, which is moved through the water during fishing in order to capture fish, and includes otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

* * * * *

Interest in an IFQ allocation means: An allocation permanently or temporarily 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.

* * * * *

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 own a documented vessel under the terms of 46 U.S.C. 12102(a), who receives temporarily transferred tilefish IFQ Allocation, as specified at § 648.291(e)(1).

* * * * *

Lessor means: (1) A vessel owner who temporarily transfers NE multispecies DAS to another vessel through the DAS Leasing Program specified at § 648.82(k); or

(2) An IFQ Allocation permit holder who temporarily transfers tilefish IFQ Allocation, as specified at § 648.291(e)(1).

* * * * *

3. In § 648.4, paragraph (a)(12) 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 permit to fish for, possess, or land tilefish, in or from the Tilefish Management Unit, and must fish under the authorization of a tilefish IFQ Allocation permit, issued pursuant to § 648.291, to possess, or land tilefish in excess of the trip limit as specified under § 648.293.

(i) *Party and charter vessel permits.* Any party or charter vessel must have been issued a Federal Charter/Party vessel permit under this part to fish for tilefish, if it carries passengers for hire. Recreational fisherman fishing onboard such a vessel must observe the recreational possession limits as specified at § 648.295 and the prohibition on sale.

(ii) [Reserved]

* * * * *

4. 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 pursuant to a tilefish IFQ Allocation permit, as described in § 648.291(a), must submit a tilefish catch report by using the IVR system within 48 hr 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. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

5. In § 648.14, paragraph (u) is revised as follows:

§ 648.14 Prohibitions.

* * * * *

(u) *Golden tilefish.* It is unlawful for any person owning or operating a vessel to do any of the following:

(1) *Permit requirements—(i) Operator permit.* 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.

(ii) *Dealer permit.* Purchase, possess, receive for a commercial purpose; or attempt to purchase, possess, or receive for a commercial purpose; 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.

(iii) *Vessel permit.* Sell, barter, trade, or otherwise transfer from a vessel; or attempt to sell, barter, trade, or otherwise transfer from a vessel; for a commercial purpose, other than solely for transport on land, 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.

(2) *Possession and landing.* (i) Fish for, possess, retain, or land tilefish, unless:

(A) 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.

(B) The tilefish were harvested by a vessel that has not been issued a tilefish permit and that was fishing exclusively in state waters.

(C) The tilefish were harvested in or from the Tilefish Management Unit by a vessel, other than a Party/Charter vessel, that is engaged in recreational fishing.

(ii) Land or possess tilefish harvested in or from the Tilefish Management Unit, in excess of the trip limit pursuant to § 648.293, without a valid tilefish IFQ Allocation permit, as specified in § 648.291(a).

(iii) Land tilefish harvested in or from the Tilefish Management Unit in excess of that authorized under a tilefish IFQ Allocation permit as described at § 648.291(a).

(iv) Operate a vessel that takes recreational fishermen for hire to fish for tilefish in the Tilefish Management Unit without a valid tilefish Charter/Party permit, as required in § 648.4(a)(12)(i).

(v) Fish for golden tilefish inside and outside of the Tilefish Management Unit, as defined in § 648.2, on the same trip.

(vi) Discard tilefish harvested in or from the Tilefish Management Unit, as defined in § 648.2, unless participating in recreational fishing, as defined in § 648.2.

(3) *Transfer and purchase.* (i) Purchase, possess, or receive for a commercial purpose, other than solely for transport on land; or attempt to purchase, possess, or receive for a commercial purpose, other than solely for transport on land; 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.

(ii) Purchase or otherwise receive for commercial purposes tilefish caught in the EEZ from outside the Tilefish Management Unit, as described in § 648.2, unless otherwise permitted under 50 CFR part 622.

(4) *Presumption.* For purposes of this part, the following presumption applies: 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.

* * * * *

6. In § 648.290, the section heading, and paragraphs (b) and (c) are revised to read as follows:

§ 648.290 Individual fishing quota program and other restrictions.

* * * * *

(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, for the first year of the Individual Fishing Quota Program (IFQ TAL), be allocated as follows: Full-time tier Category 1, 66 percent; Full-time tier Category 2, 15 percent; Part-time, 19 percent, to allow for the calculation of IFQ allocations and the issuance of IFQ

Allocation permits pursuant to § 648.291.

(c) *Adjustments to the quota.* If the incidental harvest exceeds 5 percent of the TAL for a given fishing year, the incidental trip limit of 300 lb (138 kg) may be reduced in the following fishing year. In the first year of the IFQ program only, any overages from the prior limited access category fishery will be deducted from the appropriate category, prior to the initial distribution of IFQ allocation as specified at § 648.291(c). If an adjustment is required, a notification of adjustment of the quota will be published in the **Federal Register**.

* * * * *

7. Section 648.291 is revised to read as follows:

§ 648.291 Individual fishing quota.

(a) *Individual fishing quota (IFQ) allocation permits.* After adjustments for incidental catch, research set asides, and overages, as appropriate, during the first year of the IFQ Program, the Regional Administrator shall divide the Category quotas specified pursuant to § 648.290(b), among the owners of vessels that meet the qualification criteria specified in paragraphs (a)(1)(i), and (ii) of this section. Initial allocations shall be made in accordance with paragraph (b)(1)(i) of this section, in the form of an IFQ Allocation permit issued to a qualifying vessel owner, who files a complete application, specifying the allocation percentage of the IFQ TAL that the owner is entitled to harvest. This allocation percentage shall be calculated pursuant to paragraph (c) of this section and converted annually into pounds of tilefish. Amounts of IFQ of 0.5 lb (0.23 kg) or smaller created by this allocation shall be rounded downward to the nearest whole number, and amounts of IFQ greater than 0.5 lb (0.23 kg) created by this division shall be rounded upward to the nearest whole number, so that IFQ allocations are specified in whole pounds. Allocations in subsequent years shall be made by applying the allocation percentages that exist on September 1 of a given fishing year to the IFQ TAL pursuant to § 648.290(b), subject to any deductions for overages pursuant to paragraph (f) of this section. These allocations shall be issued in the form of an annual IFQ Allocation permit.

(1) *Qualifying criteria.* (i) A vessel owner that was issued a valid Federal fisheries permit during the 2005 permit year (May 1 to April 30) that reported landings of tilefish from 2001 through 2005 that constituted at least 0.5 percent of the quota for the tilefish Category for which it was permitted; or

(ii) A person or entity that holds a valid confirmation of permit history (CPH) that meets the criteria in paragraph (a)(1)(i) of this section.

(2) [Reserved]

(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 interest in IFQ allocation, as defined in § 648.2. The Regional Administrator will notify the applicant of any deficiency in the application.

(i) *Initial application.* An applicant shall submit an application for an initial IFQ Allocation permit no later than 6 months after the effective date of this regulation.

(ii) *Renewal applications.* Applications to renew an IFQ Allocation permit must be received by September 15 to be processed in time for the start of the November 1 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.

(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 permanent allocation, as of September 1 of the current fishing year. During the period between September 1 and October 31 transfer of IFQ is not permitted, as described in paragraph (e)(4) of this section. The IFQ Allocation permit shall specify the allocation percentage of the IFQ TAL which the IFQ permit holder is authorized to harvest.

(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, or revised due to a transfer of all or part of the allocation percentage under paragraph (e) of this section.

(4) *Alteration.* An annual IFQ Allocation permit that is altered, erased, or mutilated is invalid.

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

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

(7) *Abandonment or voluntary relinquishment.* Any IFQ Allocation permit which 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) *Initial allocation formulas*—(1) *General.* An individual fishing quota of tilefish shall be calculated as a percentage of the IFQ TAL based on the following formulas:

(i) *Full-time vessels.* An owner of a vessel that held a Full-time (Category A or B; 66 percent of the adjusted TAL for Category A, and 15 percent of the adjusted TAL for Category B) limited access permit in 2005 shall receive an allocation based on the division of the vessel's average landings from 2001 through 2005 by the total average landings in their respective Category during this same time period to derive a percentage. This percentage shall then be applied to the adjusted TAL to derive an IFQ allocation percentage that shall also be converted to an amount in pounds. If the landings of all qualified vessels yield percentages that are less than the allocation of the entire adjusted quota, the remainder shall be distributed among the qualified vessels based on the ratio of their respective percentages. Vessel landings during this time period will be calculated using NMFS interactive voice reporting (IVR) data for 2002 through 2005, and NMFS dealer data submitted for 2001 (excluding landings reported from May 15, 2003, through May 31, 2004, as a result of the *Hadaja v. Evans* lawsuit).

(ii) *Part-time vessels.* An owner of a vessel that held a Part-time (Category C) limited access permit in 2005 shall receive an allocation based on the equal division of the Category C quota (19 percent of the adjusted TAL) among vessels that had landings during the 2001 through 2005 time period, to derive an IFQ allocation percentage. This percentage shall also be converted to an amount in pounds. Vessel landings during this time period will be calculated using NMFS interactive voice reporting (IVR) data for 2002 through 2005, and NMFS dealer data submitted

for 2001 (excluding landings reported from May 15, 2003, through May 31, 2004, as a result of the *Hadaja v. Evans* lawsuit).

(2) [Reserved]

(d) *Appeal of denial of permit*—(1) *General.* Any applicant denied an IFQ Allocation 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 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) *Appeal review.* The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may appeal the initial decision to the Regional Administrator by submitting a request in writing within 30 days of the notice of the initial decision. If requested, the appeal may be presented at a hearing before a hearing officer appointed by the Regional Administrator. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative decision of the Department of Commerce. The hearing officer shall make findings and a recommendation based upon the administrative record, including that generated during any hearing, pertaining to the application and appeal within NMFS to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendations from the hearing officer, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce.

(3) *Status of vessels pending appeal.* Any applicant denied an IFQ Allocation permit may request the issuance of a letter of authorization (LOA) from the Regional Administrator to continue to fish for tilefish after the effective date of the final regulations, pending the resolution of the relevant appeal, if his/her vessel was issued a valid tilefish permit in 2008. This LOA would allow a vessel to continue to fish for tilefish. If vessels fishing under an LOA are projected to land a portion of the adjusted TAL that NMFS determines would unreasonably diminish the allocations of IFQ Allocation permit holders, the Regional Administrator will impose a trip limit to reduce the landings of vessels fishing under an LOA. If the appeal is finally denied, the LOA will become invalid 5 days after

the receipt of the notice of final denial from the Regional Administrator.

(4) *LOA reserve.* During the first year of the IFQ program, the Regional Administrator will reserve 15-percent of the IFQ TAL, prior to initial distribution of IFQ allocations, to allow for continued fishing under an LOA, as specified in paragraph (d)(3) of this section, pending resolution of the relevant appeal. Any portion of the 15-percent reserve remaining after the appeals process has been completed will be distributed to IFQ Allocation permit holders based on their allocation percentages as soon as possible during that fishing year. If vessels fishing under LOAs, pending resolution of the appeals process, are projected to harvest an amount of tilefish in excess of the 15 percent reserve, the allocations for all IFQ Allocation permit holders will be reduced proportionately during that fishing year, to increase the amount of the reserve determined to be necessary. If an IFQ Allocation permit holder has no allocation remaining at the time of the proportionate reduction of all IFQ allocations, this reduction will constitute an overage and will be deducted from the IFQ Allocation permit holder's subsequent fishing year allocation.

(e) *Transferring IFQ allocations*—(1) *Temporary transfers.* Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, the owner of an IFQ allocation may transfer the entire IFQ allocation, or a portion of the IFQ allocation, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Temporary IFQ allocation transfers shall be effective only for the fishing year in which the temporary 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 temporary 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 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, an owner of an IFQ allocation may permanently transfer the IFQ allocation to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). The Regional Administrator has final approval

authority for all permanent IFQ allocation transfer requests.

(3) *IFQ allocation transfer restrictions*—(i) If IFQ allocation is temporarily transferred to any eligible entity, it may not be transferred again within the same fishing year.

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

(iii) If the owner of an IFQ allocation leases additional quota from another IFQ Allocation permit holder, any landings associated with this transferred quota would be deducted before his/her base allocation, if any exists, for the purpose of calculating the appropriate cost-recovery fee, as described in paragraph (h) of this section.

(4) *Application for an IFQ allocation transfer.* Any IFQ Allocation permit holder applying for either permanent or temporary transfer of 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 IFQ allocation transfers must be received by September 1 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, proof of eligibility to receive IFQ allocation, the amount of allocation to be transferred, and a declaration, by IFQ Allocation permit number, of all the IFQ allocations that the person or entity receiving the IFQ allocation has an interest in. The person or entity receiving the IFQ allocation must indicate the permit numbers of all federally permitted vessels that will possess or land their IFQ allocation. Information obtained from the IFQ Allocation Transfer Form is confidential pursuant to 16 U.S.C. 1881a.

(ii) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ 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 transfer application.* The Regional Administrator may reject an application to transfer 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 will result in the transferee having a tilefish IFQ Allocation 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 own a documented vessel under the terms of 46 U.S.C. 12102(a); 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.* Any IFQ allocation that is exceeded, including amounts of tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, will be reduced by the amount of the overage 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 can not be reduced in the subsequent fishing year because the full allocation had already been landed or transferred, the IFQ Allocation permit would 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 tilefish adjusted TAL, specified pursuant to § 648.290, at any point during a fishing year. For purposes of this paragraph, acquisition includes any permanent or temporary transfer of IFQ. 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.* A fee shall be determined as described in paragraph

(h)(1) of this section, and collected to recover the costs associated with management, data collection and analysis, and enforcement of the IFQ program. A tilefish IFQ Allocation permit holder shall be responsible for paying the fee assessed by NMFS. A tilefish IFQ Allocation permit holder with a permanent allocation shall incur a cost-recovery fee, which shall be paid from the value of landings of tilefish authorized under his/her tilefish IFQ Allocation permit, including allocation that is landed under a temporary transfer of allocation. A tilefish IFQ Allocation permit holder, with a permanent allocation, shall be responsible for submitting this payment to NMFS once per year, as specified in paragraph (h)(2) of this section. For the purpose of this section, the cost-recovery billing period is defined as the full calendar year, beginning with the start of the first calendar year following the effective date of the final regulations. NMFS will create an annual IFQ allocation bill, for each cost-recovery billing period, and provide it to each IFQ Allocation permit holder. The bill will include annual information regarding the amount and value of IFQ allocation landed during the prior cost-recovery billing period, and the associated cost-recovery fees. NMFS will also create a report that will detail the costs incurred by NMFS, for the management, enforcement, and data collection and analysis associated with the IFQ allocation program during the prior cost-recovery billing period.

(1) *NMFS determination of the total annual recoverable costs of the tilefish IFQ program.* The Regional Administrator shall determine the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program. The recoverable costs will be divided by the amount of the adjusted TAL to derive a fee cost per pound. IFQ Allocation permit holders will be assessed a fee based on the fee cost per pound times their landings in pounds. This fee shall not exceed 3 percent of the total value of tilefish landings of the IFQ Allocation permit holder. Prior to the first year of the IFQ program, NMFS will not have information needed to determine the management, data collection and analysis, and enforcement costs of the program. Therefore, during the initial cost-recovery billing period, the fee shall be set at 3 percent. If the recoverable costs are determined to be less than 3 percent, NMFS shall issue each IFQ Allocation permit holder a fee-overage credit, equal to the amount paid in excess of their

portion of the recoverable cost, towards their subsequent year's fee.

(i) *Valuation of IFQ allocation.* The 3 percent limitation on cost-recovery fees shall be based on the ex-vessel value of landed allocation. The ex-vessel value for each pound of tilefish landed shall be determined from Northeast Federal dealer reports submitted to NMFS which contain the price per pound at the time of dealer purchase.

(ii) [Reserved]

(2) *Fee payment procedure.* 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. 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 possible for any reason.

(3) *Payment compliance.* If the cost-recovery payment, as determined by NMFS, is not made within the time specified in paragraph (h)(2) of this section, the Regional Administrator will deny the renewal of the appropriate IFQ Allocation permit until full payment is received. If, upon preliminary review of a fee payment, the Regional Administrator determines that the IFQ Allocation permit holder has not paid the full amount due, he/she shall notify the IFQ Allocation permit holder in writing of the deficiency. NMFS shall explain the deficiency and provide the IFQ Allocation permit holder 30 days from the date of the notice either to pay the amount assessed or to provide evidence that the amount paid was correct. If the IFQ Allocation permit holder submits evidence in support of the appropriateness of his/her payment, the Regional Administrator shall determine whether there is a reasonable basis upon which to conclude that the amount of the tendered payment is correct. This determination shall be in set forth in a Final Administrative Determination (FAD) that is signed by the Regional Administrator. A FAD shall be the final decision of the Department of Commerce. If the Regional Administrator determines that the IFQ Allocation permit holder has not paid the appropriate fee, he/she shall require payment within 30 days of

the date of the FAD. If a FAD is not issued until after the start of the fishing year, the IFQ Allocation permit holder may fish until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the tilefish IFQ Allocation permit shall not be issued until such terms are met. Any tilefish landed pursuant to the above authorization will count against the IFQ Allocation permit, if issued. If the Regional Administrator determines that the IFQ Allocation permit holder owes additional fees for the previous cost-recovery billing period, and the renewed IFQ Allocation permit has already been issued, the Regional Administrator shall issue a FAD. The IFQ Allocation permit holder shall have 30 days from the date of the FAD to comply with the terms of the FAD. If the IFQ Allocation permit holder does not comply with the terms of the FAD within this period, the Regional Administrator shall rescind the IFQ Allocation permit until such terms are met. If an appropriate payment is not received within 30 days of the date of a FAD, the Regional Administrator shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection. No permanent or temporary IFQ allocation transfers may be made to or from the allocation of an IFQ Allocation permit holder who has not complied with any FAD. If the Regional Administrator determines that the terms of a FAD have been met, the IFQ Allocation permit holder may renew the tilefish IFQ Allocation permit. If NMFS does not receive full payment of a recoverable cost 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 shall be deemed to have been voluntarily relinquished pursuant to paragraph (b)(7) of this section.

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

8. Section 648.292 is revised to read as follows:

§ 648.292 Closures.

(a) *EEZ closure.* If the Regional Administrator determines that the tilefish TAL will be exceeded in a given fishing year, the Regional Administrator will close the EEZ to fishing for tilefish

for the remainder of the fishing year, and publish notification in the **Federal Register**.

(b) [Reserved]

9. Section 648.293 is revised to read as follows:

§ 648.293 Tilefish trip limits.

Any vessel of the United States fishing under a tilefish permit, as described at § 648.4(a)(12), is prohibited from possessing more than 300 lb (138 kg) of tilefish at any time, unless the vessel is fishing under a tilefish IFQ Allocation permit, as specified at § 648.291(a). Any tilefish landed by a vessel fishing under an IFQ Allocation permit, on a given fishing trip, count as landings under the IFQ Allocation permit.

10. Section 648.294 is added to read as follows:

§ 648.294 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,
- (xv) Set-aside quotas for scientific research, and
- (xvi) Changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs.

(xvii) Recreational management measures, including the bag-size limit, fish size limit, seasons, and gear restrictions or prohibitions.

(xviii) IFQ program review components, including capacity reduction, safety at sea issues, transferability rules, ownership concentration caps, permit and reporting requirements, and fee and cost-recovery issues.

(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 (a)(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.

11. Section 648.295 is added to read as follows:

§ 648.295 Recreational possession limit.

Any person fishing from a vessel that is not fishing under a tilefish vessel permit issued pursuant to § 648.4(a)(12), may land up to eight tilefish per trip. Anglers fishing onboard a Charter/Party vessel shall observe the recreational possession limit.

12. Section 648.296 is added to read as follows:

§ 648.296 Gear restricted areas.

No vessel of the United States may fish with bottom-tending mobile gear within the areas bounded by the following coordinates:

Canyon	N. Lat.			W. Long.		
	De-grees	Min	Sec-onds	De-grees	Min	Sec-onds
Oceanographer	40.0	29.0	50.0	68.0	10.0	30.0
	40.0	29.0	30.0	68.0	8.0	34.8
	40.0	25.0	51.6	68.0	6.0	36.0
	40.0	22.0	22.8	68.0	6.0	50.4
	40.0	19.0	40.8	68.0	4.0	48.0
	40.0	19.0	5.0	68.0	2.0	19.0
	40.0	16.0	41.0	68.0	1.0	16.0
	40.0	14.0	28.0	68.0	11.0	28.0
Lydonia	40.0	31.0	55.2	67.0	43.0	1.2
	40.0	28.0	52.0	67.0	38.0	43.0
	40.0	21.0	39.6	67.0	37.0	4.8
	40.0	21.0	4.0	67.0	43.0	1.0
	40.0	26.0	32.0	67.0	40.0	57.0
	40.0	28.0	31.0	67.0	43.0	0.0
Veatch	40.0	0.0	40.0	69.0	37.0	8.0
	40.0	0.0	41.0	69.0	35.0	25.0
	39.0	54.0	43.0	69.0	33.0	54.0
	39.0	54.0	43.0	69.0	40.0	52.0
Norfolk	37.0	5.0	50.0	74.0	45.0	34.0
	37.0	6.0	58.0	74.0	40.0	48.0
	37.0	4.0	31.0	74.0	37.0	46.0
	37.0	4.0	1.0	74.0	33.0	50.0
	36.0	58.0	37.0	74.0	36.0	58.0
	37.0	4.0	26.0	74.0	41.0	2.0

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